

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM : PRASHANT SARAN, WHOLE TIME MEMBER

Decision in the proceeding initiated in compliance with the directions of the Hon'ble High Court of Madhya Pradesh made vide Order dated 13.09.2013 in Writ Petition No. 15093 of 2013 (Suresh N. Vijay vs. (1) Union of India, (2) Securities and Exchange Board of India and (3) DB Corp Limited) read with Order dated 09.10.2013 in M.C.C. No. 1316 of 2013

Hearing and appearance of parties:

(1) Mr. Suresh N. Vijay, the applicant was heard on October 11, 2013, when he was represented by Mr. Amalpushp Shroti, Advocate and Mr. M. D. Nair, Assistant.

(2) DB Corp Limited was heard on November 08, 2013, represented by Mr. Ankur Mody, Advocate and Mr. Ashok Sodhani (Senior Vice President, Finance)

1. This proceeding is in compliance with the directions of the Hon'ble High Court of Madhya Pradesh, Principal Seat at Jabalpur made vide Order dated 13.09.2013 in Writ Petition No. 15093 of 2013 - Suresh N. Vijay vs. (1) Union of India, (2) Securities and Exchange Board of India and (3) DB Corp Limited, read with Order dated 09.10.2013 in M.C.C. No. 1316 of 2013. Vide the aforesaid Orders, the Hon'ble High Court of Madhya Pradesh has directed the Securities and Exchange Board of India ("hereinafter referred to as SEBI") to decide the application of the petitioner (i.e., Mr. Suresh N. Vijay) after affording an opportunity of hearing to the parties in appropriate manner by passing a reasoned order. This order is to be passed by SEBI within a period of 45 days from 09.10.2013.

2. One Suresh N. Vijay ("hereinafter referred to as the applicant") had filed an application dated May 15, 2013 with the Securities and Exchange Board of India ("hereinafter referred to as SEBI") *inter alia* stating the following :

- (i) The applicant is an assignee under a deed of assignment dated 24.02.2010 entered into with Mrs. Kishori Devi, Mrs. Hemlata Agarwal, Mr. Mahesh Prasad Agarwal and Mr. Sanjay Agarwal (who are the family members of Late Shri Dwarka Prasad Agarwal, who is the father of Mr. Ramesh Chandra Agarwal, Chairman, DB Corp Limited).

- (ii) In terms of the deed, there is absolute assignment of the proprietary rights, title, interest and liabilities in the business and affairs of the Daily Hindi Newspaper 'Dainik Bhaskar' with all its editions all over India by the assignors for consideration paid by the assignee ("the applicant"), which is irrevocable. Mr. Ramesh Chandra Agarwal, the Chairman of DB Corp Limited (hereinafter also referred to as "the Company") is also aware of such assignment.
- (iii) As per the Order dated 10.10.2006 of the Hon'ble High Court of Gujarat at Ahmedabad in Company Petition No. 127 of 2006 in Company Application No. 268 of 2006, the Company was a "resulting company" in such proceedings and was not engaged in any commercial activity. A scheme of demerger of Writers and Publishers Limited into DB Corp Limited was approved vide the aforesaid Order dated 10.10.2006. Vide another Order dated 22.12.2006, the Order dated 10.10.2006 was modified to the effect that only publishing business of the demerged company (i.e. Writers and Publishers Limited) had been transferred to the resulting company i.e., DB Corp Limited. However, in the Prospectus dated 20.12.2009, the Company had misrepresented, at several places, that the "wind farm" business of Writers and Publishers Limited was also transferred to it under the Scheme approved by the Hon'ble High Court of Gujarat vide Order dated 22.12.2006.
- (iv) It is apparent that the wind farm business of Writers and Publishers Limited was not transferred to the Company and yet the public money has been 'pocketed' by the Company upon such misrepresentation.
- (v) Even with respect to the "publication business" of Writers and Publishers Limited, the Company has not informed the public in general that Writers and Publishers Limited had no right of title and interest in Dainik Bhaskar in as much as it had lost the title dispute in Civil Suit No. 74-A/1987 (*Writers and Publishers Limited vs. Mr. Bishambhar Dayal Agarwal and Mr. Dwarka Prasad Agarwal*). A copy of the plaint filed in the suit was enclosed and the applicant has stated/mentioned certain portions from it. Such facts/statements are *inter alia* as follows :
- a) On 01.04.1972 a partnership firm in the name and style "M/s Dwarka Prasad Agarwal & Brothers" was formed of which the following were the partners along with their interest in profits and losses :
- | | | |
|-----------------------------------|---|-----|
| 1. <i>Dwarka Prasad Agarwal</i> | - | 25% |
| 2. <i>Bishambar Dayal Agarwal</i> | - | 30% |
| 3. <i>Mabesh Prasad Agarwal</i> | - | 30% |

4. *Ramesh Chandra Agarwal* - 15%

- b) A deed of partnership was executed on 10.04.1972 by all the partners. The partnership firm was to carry on three businesses as stated in the partnership deed and one of them was of newspaper, printing and publishing under the name and style of "Dainik Bhaskar" from Bhopal.
- c) On 13.03.1985, the partnership firm acting through its partner Shri Dwarka Prasad Agarwal sold its business of publishing Dainik Bhaskar from Bhopal, its property and the 'goodwill' to Writers and Publishers Limited for a consideration of ₹5,00,000/- for a period of 10 years. The applicant had reproduced paragraph 4 of the said deed which, according to the applicant, was also mentioned in paragraph 11 of the plaint.
- d) Mr. Bishambhar Dayal Agarwal (defendant no. 1) acting in violation of the terms and conditions as contained in paragraph 14 of the document dated 13.03.1985, submitted a declaration on 26.06.1986 before the Additional District Magistrate, Jabalpur, under section 5(2) of the Press and Registration of Books Act, 1867 seeking authentication to print and publish a daily newspaper under the name and style of 'Dainik Bhaskar' from Jabalpur. In column no. 10 of the declaration form, the owner's name was mentioned as "*Bishambhar Dayal Agarwal - Lessee – Bhaskar Prakashan Pvt. Ltd.*"
- e) Thereafter, Mr. Bishambhar Dayal Agarwal filed a second declaration on 30.01.1987 before the Additional District Magistrate, Jabalpur under the same provision of law, wherein in column 10 of the declaration form, it was mentioned "*Bishambhar Dayal Agarwal for Bhaskar Prakashan P. Ltd. authorised by M/s. D.P. Agarwal and Bros. (Registered)*". The plaintiff – Writers and Publishers Limited learnt that Mr. Dwarka Prasad Agarwal did not give any such authorisation in writing on behalf of the partnership firm.
- f) When efforts failed to restrain publication of Dainik Bhaskar from Jabalpur by the defendants, Mr. Ramesh Chandra Agarwal filed an objection petition before the District Magistrate, Jabalpur, who after hearing the parties, cancelled, on 14.10.1987, the declaration made by Mr. Bishambhar Dayal Agarwal. Thereafter, on 20.10.1987, Mr. Bishambhar Dayal Agarwal filed a third declaration showing M/s. D.P. Agarwal & Bros. as owner of the newspaper. The same was authenticated on the same day.

- g) Pursuant to the Order dated 14.10.1987 passed by the District Magistrate, Jabalpur, Mr. Bishambhar Dayal Agarwal continued to publish Dainik bhaskar from Jabalpur with the connivance of defendant no.2 (i.e., *Mr. Dwarka Prasad Agarwal*) showing that he is publishing Dainik Bhaskar for and on behalf of the firm, M/s. D.P. Agarwal & Bros.
- h) The contradictory statements made by Mr. Bishambhar Dayal Agarwal (defendant no.1) indicated that he was frantically trying to extricate himself from the sale of business and goodwill of "Dainik Bhaskar".
- i) In view of the same, the Civil Suit No. 74-A/1987 was filed by Writers and Publishers Limited for the following reliefs :
- (i) Declaration to the effect that the plaintiff is the owner of the business of Dainik Bhaskar published from Bhopal and of its goodwill since 01.04.1985 and that nobody else is entitled to publish a newspaper in the name and style of 'Dainik Bhaskar' from anywhere in India ;
 - (ii) Perpetual injunction to restrain the defendant from printing, publishing and selling the daily newspaper 'Dainik Bhaskar' either from Jabalpur or from any other place in India ;
 - (iii) Compensation of Rs.30,000/- by way of damages for losses caused due to unauthorised and illegal publication of the said newspaper.
- j) During the pendency of the said suit, Mr. Dwarka Prasad Agarwal passed away on 19.07.1993 and the suit was abated. However, vide order dated 27.10.1993, the civil suit was withdrawn by Writers and Publishers Limited.
- (vi) Mrs. Kishori Devi and Ms. Hemlata Agarwal are the legal heirs of Late Shri Dwarka Prasad Agarwal as declared by the Hon'ble Supreme Court vide judgment dated 07.07.2003. Recently, vide order dated 07.05.2013, the First Additional District Judge, Bhopal has declared the Civil Suit No. 74-A/1987 as abated and rejected the application of the applicant (i.e. Mr. Suresh N. Vijay) for being added as a party.
- (vii) It is apparent that on account of dismissal of the aforesaid civil suit no. 74-A/1987 vide Order dated 27.10.1993, Writers and Publishers Limited could not have claimed ownership rights of Dainik Bhaskar especially against Mrs. Kishori Devi and Ms. Hemlata Agarwal i.e. the legal heirs of Late Shri Dwarka Prasad Agarwal. As the rights of Mrs. Kishori Devi and Ms. Hemlata Agarwal have been assigned to the applicant, Writers and Publishers Limited and its successor i.e., the Company cannot claim ownership rights of Dainik Bhaskar.

- (viii) The applicant reserves his right to establish his title over 'Dainik Bhaskar' in appropriate proceedings if at all his title is questioned.
- (ix) Till today, Mr. Ramesh Chandra Agarwal or anybody claiming through him has not challenged the applicant's title.
- (x) The dismissal of the civil suit no. 74-A/1987 vide order dated 27.10.2012 has not been disclosed by the Company anywhere in the Prospectus. Assuming that Writers and Publishers Limited had ownership of Dainik Bhaskar under the deed dated 13.03.1985, such ownership was only for a period of 10 years.
- (xi) If these facts had been made available in the Prospectus to the public, no reasonably prudent investor from public would have invested in a company whose predecessor had lost the title dispute of 'Dainik Bhaskar' or whose ownership ceased to exist long back on 13.03.1985 (*should be 13.03.1995*). Therefore, to purposely keep the public in general in dark and to grab their money, the deed dated 13.03.1985 was neither mentioned nor relied upon anywhere in the Prospectus. It is settled law that no one can confer a title better than what he himself possess and as Writers and Publishers Limited did not possess any title and had lost a civil suit, the same could not pass on any title of 'Dainik Bhaskar' to the Company. Without disclosing such vital fact which goes to the root of the matter, public money has been pocketed through public issue dated 20.12.2009. There is likelihood that the money collected from the public may be siphoned off.
- (xii) The applicant submitted that the Company has made the following misrepresentations/suppression in its Prospectus dated 20.12.2009 and having taken public money upon such misrepresentation/suppression has committed fraud :
- a) The wind farm business of Writers and Publishers Limited was also transferred to it under the scheme approved by the Hon'ble High Court of Gujarat vide Order dated 22.12.2006 ;
 - b) Writers and Publishers Limited has lost the title dispute of 'Dainik Bhaskar' in Civil Suit No. 74-A/1987 vide Order dated 27.10.1993 ; and
 - c) The Sale Deed dated 13.03.1985 was no more in existence and Writers and Publishers Limited had lost its title over 'Dainik Bhaskar' much before it was transferred to the Company.
- (xiii) The aforesaid misrepresentation/suppression are quite material and any reasonable prudent investor would not have invested money in the Company as per the Prospectus dated 20.12.2009 if the aforesaid disclosures were made.
- (xiv) The applicant requested SEBI to take the following steps :

1. To direct the Company to submit its explanation on the aforesaid misrepresentation/suppression ;
2. To direct the Company to produce the original copy of the sale deed dated 13.03.1985 before SEBI in the instant proceedings ;
3. To direct the Company to produce the entire account of public money collected through the Prospectus dated 20.12.2009 ; and
4. To issue such other direction that is deemed necessary in public interest to safeguard the interests of the investors.

3. SEBI forwarded the aforesaid application to the Book Running Lead Managers who had lead-managed the IPO of the Company during the year 2009. The lead managers sent a response dated June 20, 2013 to the applicant. In the response, with respect to the alleged transfer of wind farm business, the following was mentioned :

"As regards the transfer of windfarm business of Writers and Publishers Limited ("WPL") to the Company, the High Court of Ahmedabad approved the scheme of arrangement for de-merger and transfer of publishing business of WPL to the Company as per the scheme of arrangement pursuant to by its order dated October 10, 2006 (and amended order dated December 22, 2006). The relevant details of the scheme of arrangement have been disclosed on page 115 of the Prospectus. Based on documents provided by the Company, we understand that as per clause 1.9 of the scheme of arrangement, 'publishing business' is defined to include the windfarm business of WPL. Accordingly, the disclosure of windfarm business as transferred to the Company has been provided in the Prospectus, inter alia, on pages xxxvii, 15 and 103 of the Prospectus. "

With respect to the allegation over the title of 'Dainik Bhaskar', the response stated the following :

"As regards the dispute over title of "Dainik Bhaskar", please note that as per the requirements of Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 ("SEBI Regulations"), the Prospectus disclosed details of all litigations and disputes existing as on the date of Prospectus in section titled "Outstanding Litigations and Material Developments" beginning on page 270 of the Prospectus. The title over "Dainik Bhaskar", as per the directions of the Supreme Court in its order dated July 7, 2003, was disclosed on page 117 of the Prospectus. Further, a risk factor highlighting the past dispute over title "Dainik Bhaskar" was disclosed on page xii of the Prospectus. In addition to the above, the Company received various complaints relating to dispute over title of "Dainik Bhaskar" pursuant to filing of its draft red herring prospectus with SEBI and summary of such complaints along with response by the Company were also disclosed in the Prospectus, beginning on page 118. "

Additionally, the response stated "2.3 We note that you have also mentioned a deed of assignment dated February 24, 2010 as well as certain order passed in 2012 and 2013 in the Complaint, which are events subsequent to the filing of the Prospectus and the Issue. Hence, the same could not have been mentioned in the Prospectus, which contained information as on the date of its filing with the Registrar of Companies."

4. The lead managers, vide letter dated June 20, 2013, also forwarded a copy of the response sent to the applicant. In the letter to SEBI, the lead managers confirmed that the reply and clarifications provided by the Company are satisfactory. It was also confirmed that all relevant disclosures have been made in the Prospectus and are therefore in compliance with the spirit and text of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009. SEBI, on perusal of the contents of the response, concluded that the reply is in order and the case did not warrant further action.

5. The applicant filed a Writ Petition (No. 15093 of 2013 - Suresh N. Vijay vs. (1) Union of India, (2) SEBI and (3) DB Corp Limited) before the Hon'ble High Court of Madhya Pradesh, Principal Seat at Jabalpur. The writ petition was disposed off by the Hon'ble High Court by way of an Order dated 13.09.2013, wherein the following is operative/relevant portion :

" The only prayer made in the writ petition is seeking direction against the respondent No. 2 to decide the application made by the petitioner under the provisions of the Securities and Exchange board of India Act, 1992, which according to the petitioner is pending right from 15.05.2013 and of which reply has already been submitted by respondent no. 3.

.....

In view of the aforesaid, without entering into the merits of the application submitted by the petitioner before the respondent No.2, this writ petition is disposed of with a direction to respondent No.2 to decide the application of the petitioner after affording an opportunity of hearing to the parties in appropriate manner by passing a reasoned order within a period of one month from the date of receipt of certified copy of the order passed today.

With the aforesaid, the writ petition stands disposed of. "

[Emphasis supplied]

6. Thereafter, in an application (M.C.C. No. 1316 of 2013) for extension of time granted vide Order dated 13.09.2013 filed by the Company, the Hon'ble High Court passed the following Order dated 09.10.2013 -

"Keeping in view the aforesaid, by modifying the order dated 13.09.2013, it is directed that the issue, as directed to be decided by respondent No. 2 in the writ petition, the non applicant No.3 in the present MCC-Securities and Exchange Board of India be adjudicated within a period of 45 days from the date of this order.

MCC stands disposed of. "

7. In terms of the Hon'ble High Court's Orders, the application filed by Mr. Suresh N. Vijay has to be decided by passing a reasoned order, within a period of 45 days from 09.10.2013, after affording an opportunity of hearing to the parties. In compliance with the said Orders of the Hon'ble High Court, the applicant, Mr. Suresh N. Vijay and the Company were afforded an opportunity of personal hearing on 11.10.2013. On the said day, the applicant attended the hearing through his Advocate, Mr. Amalpushp Shroti, who made submissions on the lines of the application. Liberty was granted to the applicant to file written submissions, if any, within a period of 15 days. The applicant filed his written submissions vide letter dated 22.10.2013, wherein he had placed reliance on certain documents and case laws in support of his submissions. As regards the Company, a request was made on the date of the hearing vide letter dated 11.10.2013 requesting for an adjournment of the personal hearing. The Company referred to its application (M.C.C. No. 1316/2013) filed before the Hon'ble High Court seeking extension of time in disposing of the application filed by the applicant. Accordingly, the personal hearing was rescheduled to 01.11.2013 and the Company was informed of the same.

8. The personal hearing fixed on 01.11.2013 with respect to the Company was rescheduled to 08.11.2013 due to certain administrative exigencies. On 08.11.2013, the Company was represented by its Advocate, Mr. Ankur Mody and Mr. Ashok Sodhani, A.V.P., Finance. In the hearing, an additional reply (*undated*) was filed on behalf of the Company. The learned Advocate reiterated the submissions made in the response dated June 20, 2013 (*sent by the lead managers to the applicant*) and those in the additional reply.

9. In the additional reply, as regards the allegation of transfer of windfarm business, the Company reiterated the statements contained in the response dated 20.06.2013 of the lead managers. With respect to the allegation of misrepresentation and suppression of facts pertaining to the title of Dainik Bhaskar, the Company has made the following submissions :

- (i) As on the date of submitting the Prospectus, there was no dispute pending pertaining to the title of Dainik Bhaskar.

- (ii) The Civil Suit (no. 74-A/1987) which was dismissed vide Order dated 27.10.1993 is of no consequence as the said order was not on merits but was an order of dismissal on account of abatement.
- (iii) Vide letter dated 18.06.2004 issued by the Registrar of Newspapers for India ("RNI"), the name of Writers and Publishers Limited was recorded as owner of title to 'Dainik Bhaskar' from Bhopal as well as for various editions mentioned in the said letter. The said letter was in existence and in force on the date of submission of the Prospectus by the Company and the said letter continues to be in force even today.
- (iv) Therefore, there is no dispute pending in respect of title 'Dainik Bhaskar' on the date of submission of Prospectus which could have been allegedly suppressed by the Company.
- (v) Adequate disclosures were made in page nos. xii, 117, 118 and 270 of the Prospectus.
- (vi) With respect to the sale deed dated 13.03.1985 which the applicant claims to have a bearing over the title of 'Dainik Bhaskar', the Company has submitted that the applicant himself instituted a civil suit in the year 2013 before the District Judge, Bhopal *inter alia* seeking a declaration that ownership of the title of 'Dainik Bhaskar' vests in a partnership firm known as M/s. D.P. Agarwal and Bros. in which the applicant has become one of the partners by way of an alleged assignment deed dated 24.02.2010. In this suit, the applicant has pleaded about the alleged sale deed of 13.03.1985 and further pleaded that the sale deed is invalid and void. The aforesaid civil suit is still pending before a competent forum and there was no suit pending before the date of submission of the Prospectus. The legality and validity of the plea regarding the sale deed dated 13.03.1985 is yet to be adjudicated by the competent forum after considering evidence on record. The applicant by way of instant complaint is trying to obtain a premature finding/observation of SEBI on this issue in anticipation that the applicant would be able to use the same to its aid and assistance in the pending civil suit filed in Bhopal.
- (vii) The letter dated 18.06.2004 issued by the RNI was preceded by the judgment of the Hon'ble Supreme Court dated 07.07.2003 and the judgment dated 08.12.2003 (in W.P. No. 9150 of 2003) of the Hon'ble High Court of Madhya Pradesh at Gwalior, wherein the High Court had directed the RNI to amend its records by restoring the entries regarding ownership of title "Dainik Bhaskar" as it prevailed immediately prior to 29.06.1992. Therefore, in the light of the letter dated 18.06.2004 issued by the RNI, there was no suppression of any material committed by the Company in submitting the Prospectus on 20.12.2009.

- (viii) After submission of the prospectus, more particularly from 2010 onwards, several attempts were made by rival members of the Agarwal family seeking judicial order setting aside the letter dated 18.06.2004 issued by the RNI.
- a. Mr. Mahesh Prasad Agarwal had instituted a writ petition which was turned down by the Hon'ble High Court of Delhi *inter alia* holding that if any party is aggrieved by the said letter of RNI, it should seek recourse before the Hon'ble Supreme Court by way of contempt proceedings. Copy of judgment dated 22.02.2011 passed in LPA No. 182 of 2011 passed by the Division Bench of the Hon'ble High Court was enclosed. The said order was subjected to further challenge in SLP No. 19395-19396/2011, which was also dismissed.
 - b. Mrs. Kishori Devi Agarwal and Mrs. Hemlata Agarwal also filed a civil suit [C.S. (OS) No. 1663/2011] before the Hon'ble Delhi High Court *inter alia* seeking a declaration that the ownership of the title of 'Dainik Bhaskar' vests in the firm M/s. D P Agarwal and Bros. in which they claimed to be the partners.
 - c. Mr. Mahesh Prasad Agarwal also instituted another civil suit (No. 646/2012) before the District Court, Jhansi *inter alia* seeking a declaration that the ownership of the title of 'Dainik Bhaskar' vests in the firm M/s. D P Agarwal and Bros. and him being a 30% partner is entitled to recover 30% of the total revenue generated by the Company from the advertisements published in Dainik Bhaskar.
- (ix) As 3 different civil suits {(1) CS No. 1663/2011 - Mrs. Kishori Devi and another vs. Ramesh Chandra Agarwal and others ; (2) CS No. 194/2013 - Suresh N. Vijay vs Ramesh Chandra Agarwal and another and (3) C S No. 646/2013 - Mahesh Prasad Agarwal vs. Writers and Publishers Limited and others} relating to a common subject matter were instituted by 3 different persons, the Company has preferred a Transfer petition before the Hon'ble Supreme Court for consolidating all the three suits at one place. Those petitions are pending and the applicant has already entered appearance in them.
- (x) The allegation of Writers and Publishers Limited losing the title of 'Dainik Bhaskar' in Civil Suit No.74-A/1987 and the non-existence of the sale deed dated 13.03.1985 before the transfer of title of Dainik Bhaskar (which are points (2) and (3) mentioned in page 7 of the application), are already sub-judice and judicial propriety warrants that such issues are best left untouched to be adjudicated by competent forums. In another proceeding bearing C.R. No. 38/2013 vide judgment dated 06.05.2013 it was held by the Hon'ble High Court of Madhya Pradesh at Gwalior that no court or tribunal except the Hon'ble

Supreme Court can set aside the letter dated 18.06.2004 issued by the RNI as the said letter has been issued as a consequence and is a direct fallout of the judgment dated 07.07.2003 passed by the Hon'ble Supreme Court. If above issues would impliedly involve adjudication regarding validity and legality of the letter dated 18.06.2004 issued by the RNI and finding on the issues would have its effect on the said letter and therefore would stand in violation of the above said order of the Hon'ble High Court of Madhya Pradesh at Gwalior.

- (xi) The controversy raised at points (2) and (3) at page 7 of the application was not in existence at the time of submission of the Prospectus and has been raised only after the issuance of Prospectus by the applicant. Therefore, there was no occasion for the Company to commit any suppression or misrepresentation in respect of such issues mentioned in the application at the time of submission of the Prospectus.

In view its submissions, the Company prayed that the application be dismissed with costs as it is misconceived and unsubstantiated.

10. I have considered the statements/allegations made in the application, the written submissions made by the applicant, the lead managers' response dated June 20, 2013, the additional reply filed by the Company, the documents submitted by the parties and the oral submissions made by the parties during the personal hearing. On consideration of the application, I find that the applicant has alleged that the Company has either misrepresented or suppressed facts with respect to –

- (i) the transfer of the windfarm business from Writers and Publishers Limited to the Company ; and
- (ii) Writers and Publishers Limited had lost its title over 'Dainik Bhaskar' much before it was transferred to the Company.

in its Prospectus issued with respect to its IPO in the year 2009.

11. As the allegations pertain to the disclosures made by the Company in its Prospectus, it would be proper, before proceeding to deal with such allegations, to note the objectives/reasons as to why SEBI has stipulated the disclosures in the offer documents when a company proposes to raise capital from the public. The disclosures are mandated under the SEBI (Disclosure and Investor Protection) Guidelines, 2000 (now repealed) and the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 to help the investors to take informed investment

decisions with respect to the securities that are proposed to be issued to the public by a Company. In this regard, the Hon'ble Securities Appellate Tribunal in the matter of *SRM Energy Ltd. vs. SEBI and another* (Appeal No. 77 of 2012 decided on 18.05.2012) has observed "The Board, as a market regulator and as protector of interest of investors in securities, is mandated to see that proper disclosures are made in the draft document to enable investors to take an informed decision before investing their money....." The disclosures which are stipulated in the offer document/Prospectus to be made by a company should be in such a way that a prudent investor could understand the contents and their import, which ultimately would enable him to decide in investing in that Company.

12. The Company had come out with its IPO in the year 2009, where the issue opened on December 11, 2009 and closed on December 15, 2009. Therefore, this IPO was regulated/guided by the provisions of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 ("the ICDR Regulation"), with respect to the disclosures in the Prospectus. Although, SEBI does not approve the correctness or veracity of the disclosures made in the offer documents, SEBI mandates the issuer company to make proper and relevant disclosures as required under the relevant Guidelines/Regulations in order to facilitate the investors to take an informed decision.

13. Part A of Schedule VIII of the ICDR Regulations deal with the disclosures in Red Herring Prospectus, Shelf Prospectus and Prospectus. Item (iv) deals with the disclosures of Risk Factors. It is also provided that the "Risk Factors" that have to be disclosed by the issuer company shall be classified as those which are specific to the project and internal to the issuer company and those which are external and beyond the control of the issuer company. Further, risk factors shall be determined on the basis of their materiality and such 'materiality' was to be decided based on the guidelines provided thereunder. Item (A) of (X) in Part A deals with the disclosures of "Outstanding Litigations and Material Developments". The disclosure of such litigations *inter alia* pertaining to those involving the issuer company, company's subsidiaries and promoters and group companies.

14. I would now proceed to examine whether there was any misrepresentation or suppression by the Company in its Prospectus, as alleged by the applicant, in the background of the rationale behind such disclosures and the disclosure requirements of the ICDR Regulations, as applicable.

15. The applicant has alleged that in the Prospectus dated 20.12.2009, the Company has misrepresented at several places that the windfarm business of Writers and Publishers Limited

was also transferred to it under the Scheme approved by the Hon'ble High Court of Gujarat vide Order dated 22.12.2006. According to the applicant, a Scheme of demerger of Writers and Publishers Limited into DB Corp Limited was approved by the Hon'ble High Court vide Order dated 10.10.2006. However, vide an Order dated 22.12.2006, the Order dated 10.10.2006 was modified to the effect that only the publishing business of the demerged company was transferred to the Company. The applicant has reiterated his allegation in the written submissions also. The Company, in its additional reply, has stated that the Order dated 22.12.2006 passed by the Hon'ble High Court itself records that the windfarm business of Writers and Publishers Limited stands transferred to the Company. The Company also states that adequate disclosures were made in the Prospectus on pages xxxvi, 15, 103 and 115. It is contended therefore that the said allegation is unfounded and baseless. The additional reply also refers to the response dated 20.06.2013 of the lead managers in this regard.

16. I have perused the Prospectus, the Orders dated 10.10.2006 and 22.12.2006 passed by the Hon'ble High Court of Gujarat and the Scheme of Demerger. Vide the Order dated 10.10.2006, the Hon'ble High Court of Gujarat has sanctioned the Scheme of Arrangement between Writers and Publishers Limited and DB Corp Limited and their respective shareholders. In terms of the sanctioned Scheme, which is submitted by the Company, the Scheme of Arrangement was *inter alia* presented for 'vesting of the Publishing Business (as defined in Clause 1.9) of Writers & Publishers Limited as a going concern into D.B. Corp Limited'. Clause 1.9 of the said scheme *inter alia* would mean the following :

"1.9 "Publishing Business" means and includes the undertaking comprising of :

1.9.1 All assets (whether movable or immovable, real or personal, corporeal or incorporeal, present, future, contingent, tangible or intangible) pertaining to the publishing business including that of the wind farm project of the Demerged Company :

....."

The demerged company in this case is Writers and Publishers Limited. The above provision would make it clear that the publishing business means and includes wind farm project of Writers and Publishers Limited.

In the Order dated 22.12.2006 passed by the Hon'ble High Court, the following is noted -

"It is contended on behalf of the petitioner that inadvertently in the drawn up order in Para 1, 2 & 3 it has not been mentioned that it is the publishing business of the de-merged company under the scheme came to be transferred

and all the liabilities and duties of publishing business of demerged company have been transferred. Therefore, Ld. Advocate has requested to permit the applicant to substitute the said order and submit a fresh drawn up order mentioning that only publishing business of the de-merged company has been transferred as per the scheme and in Para 1, 2 & 3, after the words, demerged company the word publishing business as per the scheme be added.

3. On going through the scheme, which has been sanctioned by this Court, more particularly Para 4.1, 4.2 & 4.3, it appears that only publishing business of the de-merged company has been transferred to the resulting company. Accordingly, the applicant is permitted to submit/ substitute a fresh drawn up order by mentioning in Para 1, 2 & 3 that publishing business of the de-merged company has been transferred as per the scheme.

4. Accordingly, a fresh drawn up order be submitted by the petitioner and office to issue a fresh order accordingly. This application is accordingly disposed of. No order as to the costs."

A reading of the Order dated 22.12.2006 suggests that Writers and Publishers was permitted by the Hon'ble High Court to "submit/substitute a fresh drawn up order by mentioning in Para 1, 2 & 3 that publishing business of the de-merged company has been transferred as per the scheme" and does not appear to suggest that the definition of "publishing business" as defined in the Scheme was amended. Therefore, according to me the meaning of "publishing business" which included wind farm project, was not altered and that the Company in pages xxxvi, 15, 103 and 115 of its Prospectus had mentioned the same. The relevant statements made in the aforesaid pages of the Prospectus are mentioned in the Table below :

Relevant page no. of Prospectus	Reproduction of relevant contents from the Prospectus dated 20.12.2009
At page xxxvi	"Our Company has been engaged in media related business activities since April 1, 2005 pursuant to the scheme of demerger of the publishing and the windfarm business of WPL....."
At page 15	"On December 22, 2006, the Hon'ble High Court of Gujarat approved the scheme of arrangement following which the publication business and the windfarm business of Writers and Publishers Limited was transferred to our Company....."
At page 103	"We also own windmills with a total rated capacity of 4.50MW in Madhya Pradesh. The electricity generated at our wind farm is currently sold to the State electricity board pursuant to a power

	purchase agreement with a 20 year term"
At page 115	<p>"WPL Demerger</p> <p>The High Court of Gujarat by its order dated October 10, 2006 and amended order dated December 22, 2006 approved the scheme of arrangement under section 391 to 394 of the Companies Act following which the entire publication business and the windfarm business of WPL was transferred to our Company</p>

The aforesaid statements had mentioned about the Scheme as sanctioned vide Orders dated 10.10.2006 and 22.12.2006.

17. I note that the lead managers had responded to the allegation with respect to the *'transfer of windfarm business'* vide their response dated 20.06.2013, which is discussed at paragraph 3 above. I agree with the contents of such response.

18. From the above discussions which have been based on documents and Court Orders, I am of the opinion that the applicant's allegation with respect to the *'transfer of windfarm business'* does not appear to be valid.

19. The next allegation levelled by the Company in its application is that the Company did not have a valid title to the newspaper 'Dainik Bhaskar' as Writers and Publishers Limited, which transferred the rights of Dainik Bhaskar to the Company, did not have right of title as it had lost the title dispute in Civil Suit No. 74-A/1987. The applicant has also stated that assuming that Writers and Publishers Limited had ownership of Dainik Bhaskar, the same was valid only for a period of 10 years in terms of the deed dated 13.03.1985. The applicant has made various averments in his application which have been mentioned in paragraph 2 above. Such averments were also reiterated in the written submissions.

20. The lead managers, in their response dated 20.06.2013 to the applicant, have stated that the Prospectus had disclosed details of all litigations and disputes existing as on the date of Prospectus under the caption "*Outstanding Litigations and Material Developments*" beginning from page 270 thereof. It was also mentioned therein that the title over Dainik Bhaskar as per the directions of the Hon'ble Supreme Court in its Order dated 07.07.2003 was disclosed at page 117 of the prospectus. The past disputes over the title was disclosed on page xii and the summary of

complaints and their responses were also mentioned in the Prospectus from page no. 118 onwards.

21. The applicant in this case has alleged that Writers and Publishers Limited has lost the title dispute of 'Dainik Bhaskar' in Civil Suit No. 74-A/1987 vide Order dated 27.10.1993 and that the sale deed dated 13.03.1985 was no more in existence and therefore Writers and Publishers Limited had lost its title over 'Dainik Bhaskar' much before it was transferred to the Company. I have considered such allegations and note that in this regard, the relevant fact that was to be highlighted or made known to a proposed investor is that the Company's title of ownership of 'Dainik Bhaskar' was disputed.

22. The exercise for me now would be to ascertain whether the Company, through its statements/disclosures in its Prospectus, informed the same in clear terms to an investor. In this regard, it would be necessary to note the statements/disclosures that were made by the Company in its Prospectus dated 20.12.2009 :

a) **At page xii of the Prospectus, the following was *inter alia* mentioned :**

"2. **The ownership of the newspaper "Dainik Bhaskar" has been challenged in the past and we cannot assure you that such persons will not raise any similar or other disputes in future. In the event such disputes are raised and subsequently determined against our Company, the same could have an adverse impact on our reputation and goodwill.**

In the past, the ownership of the newspaper "Dainik Bhaskar" has been challenged by certain relatives of one of our Promoters as well as by other persons. The Hon'ble Supreme Court of India vide its Order dated July 7, 2003 states that "the consequences of this order would be that the parties shall be relegated to the same position in which they were immediately prior to passing of the order dated June 29, 1992. All parties, statutory authority and courts, including the civil courts are directed to act accordingly."

Based on the Supreme Court order dated July 7, 2003, the Registrar of Newspapers for India ("RNI") issued a letter dated June 18, 2004 and the ownership has been registered in our name. We cannot assure you that such persons will not raise any similar or other disputes in future. In the event such disputes are raised and subsequently determined against our Company, the same could have an adverse impact on our reputation and goodwill. For further details, please refer to the section titled "History and Certain Corporate Matters" beginning on page 115.

3. **The title 'Dainik Bhaskar' also vests with persons other than promoter group**

The Hon'ble Supreme Court of India by its order dated July 7, 2003 stated that "the consequences of this order would be that the parties shall be relegated to the same position in which they were immediately prior to passing of the order dated June 29, 1992. All parties, statutory authority and courts, including the civil courts are directed to act accordingly."

Based on the Supreme Court order dated July 7, 2003 in WPC(C) No. 527/93, the Registrar of Newspapers for India ("RNI") updated the records on the basis of information confirmed by the concerned District Magistrate the ownership status of 'Dainik Bhaskar' immediately prior to June 29, 1992 was given as below:

Place of publication	Name of the owner
<i>Bhopal</i>	<i>M/s Writers and Publishers Limited</i>
<i>Indore</i>	<i>M/s Bhaskar Graphics and Printing Arts Limited (subsequently merged with WPL)</i>
<i>Gwalior</i>	<i>M/s Bhaskar Publications and Allied Industries Private Limited</i>
<i>Jhansi</i>	<i>Mr. Sanjay Agarwal</i>
<i>Jabalpur</i>	<i>Mr. B.D. Agarwal</i>

The title 'Dainik Bhaskar' also vests with Mr. Sanjay Agarwal who is person other than the promoter group as per the SEBI Regulations. For details refer to section titled 'History and Certain Corporate Matters' beginning on page 115 of this Prospectus. "

b) The Prospectus has also mentioned *inter alia* about the complaints received from Mrs. Kishori Devi, Mrs. Hemlata Agarwal and Mr. Mahesh Prasad Agarwal (*who are the assignors from whom the applicant claims to have received assignment of the proprietary rights, title, interest and liabilities in the business and affairs of the Daily Hindi Newspaper 'Dainik Bhaskar'*) with respect to the ownership of 'Dainik Bhaskar' and the summary of responses given by the Company to them.

c) In page 117 of the Prospectus, the following was *inter alia* mentioned :

"History of our Company

The first edition of Dainik Bhaskar was published in Madhya Pradesh in the late sixties.

The office of the RNI issued a letter No 5/4/1996-Admn dated June 18, 2004 to the District Magistrate, Gwalior, Indore, Jhansi, Jabalpur and Bhopal with a copy to the owners stating that, in light of the Supreme Court order dated July 7, 2003 in the Civil Appeal No. 4782 of 1996 with C.A. No. 4783 of 1996 and W.P. (C) No. 527 of 1993, the ownership of Dainik Bhaskar was updated and the ownership of Dainik Bhaskar was relegated back to the ownership of Dainik Bhaskar immediately prior to June 29, 1992. In terms of the aforementioned letter issued by RNI and judgment of the Hon'ble Supreme Court, the ownership pattern of Dainik Bhaskar as on June 29, 1992 was as follows:

Place of publication	Name of the owner
Bhopal	M/s Writers and Publishers Limited
Indore	M/s Bhaskar Graphics and Printing Arts Limited (subsequently merged with WPL)
Gwalior	M/s Bhaskar Publications and Allied Industries Private Limited
Jhansi	Mr. Sanjay Agarwal
Jabalpur	Mr. B.D. Agarwal

Further, the office of RNI by a letter dated June 18, 2004 addressed to the District Magistrates, Satna, Raipur, Bilaspur, Nagpur, Jaipur, Jodhpur, Ajmer, Bikaner, Kota, Sriganganagar, Udaipur, Chandigarh, Panipat, Hissar and Faridabad, confirmed that the ownership status of the editions which commenced publication after June 29, 1992 is as follows:

Place of publication	Name of the owner
Satna, Raipur, Bilaspur, Nagpur, Jaipur, Jodhpur, Ajmer, Bikaner, Kota, Sriganganagar, Udaipur, Chandigarh, Panipat, Hissar and Faridabad	Writers and Publishers Limited (now Writers and Publishers Private Limited)

WPL entered into a memorandum of understanding dated November 15, 2006 with the legal heirs of Late Mr. B.D. Agarwal and Bhaskar Prakashan Private Limited, pursuant to which, the legal heirs of Late Mr. B.D. Agarwal relinquished their ownership to the title "Dainik Bhaskar" in favour of WPL and in lieu of the same WPL granted a perpetual right to Bhaskar Prakashan Private Limited (agreed by legal heirs of Late Mr. B D Agarwal) to print and publish and manage "Dainik Bhaskar" from 18 districts i.e. (Jabalpur, Narsinghpur, Seoni, Mandla, Chhindwara, Rewa, Satna, Shahdol, Sidhi, Balaghat, Damoh, Panna, Chhatarpur, Tikamgarh, Anuppur, Umaria, Katni, Dindori), out of 48 Districts of Madhya Pradesh with entire Maharashtra and Western Uttar Pradesh.

Pursuant to WPL Demerger the entire publications business of WPL was transferred to our Company. As a part of the WPL Demerger, all the consents and approvals issued to WPL including RNI registrations were to be transferred in the name of our Company. We have received all the RNI registration in the name of our Company, as set below:

- 1. Pursuant to a letter dated June 24, 2008 issued by the RNI, the RNI registration of 'Dainik Bhaskar' for Amritsar, Jalandhar and Ludhiana editions were transferred from WPL to our Company.*
- 2. Pursuant to a letter dated March 18, 2008 issued by the RNI, the RNI registration of 'Dinva Bhaskar' in the cities of Ahmedabad, Surat, Baroda, Rajkot, Bhuj and Mumbai was transferred from Mr. Sudhir Agarwal to our Company.*
- 3. On October 10, 2008, the ownership of 'Dainik Bhaskar' editions of Bhopal and New Delhi were changed from WPL to our Company in the records of RNI.*
- 4. Pursuant to a letter dated March 18, 2008 issued by the RNI, the RNI registration of 'Dainik Bhaskar' for Sagar edition was transferred from WPL to our Company.*
- 5. Pursuant to a letter dated January 2, 2008 issued by the RNI, the RNI registration of 'Dainik Bhaskar' for Chandigarh, Jaipur Ajmer, Jodhpur Bikaner Udaipur and Kota editions, were transferred from WPL to our Company.*
- 6. RNI has by letter dated October 28, 2004 has clarified that there is no edition being published from Sriganganagar. The RNI registration certificate for Bikaner has been transferred from Writers and Publishers Limited to the Company pursuant to letter dated January 2, 2008 issued by the RNI. Sriganganagar 'satellite' edition is published from Bikaner and printed in Sriganganagar now.*
- 7. Pursuant to a letter dated January 7, 2008 issued by the RNI, the RNI registration of 'Dainik Bhaskar' for Panipat, Hisar and Faridabad editions, were transferred from WPL to our Company.*
- 8. Pursuant to a letter dated December 31, 2007 issued by the RNI, the RNI registration of 'Dainik Bhaskar' for Ujjain, Raipur, Bilaspur and Indore editions were, transferred from WPL to our Company.*

....."

d) In section VII (Legal & Other Information) the Company has mentioned about the outstanding litigation and material developments.

One such litigation pertains to a writ petition (WP (C) 9016/2008) filed by Mr. Sanjay Agarwal against the Union of India, DB Corp Limited and others praying for a writ in the nature of certiorari, wherein it is prayed that the records in relation to the title verification of the newspaper 'Dainik Bhaskar' and issued in the name of M/s. D B Corp Limited for printing and publishing from Dehradun and for quashing the decision of the RNI, allotting the title 'Dainik Bhaskar' to the Company. The petitioners have also prayed for writ in the nature of Mandamus

commanding the respondents to issue the certificate of registration in relation to the title 'Dainik Bhaskar' from Dehradun in the name of petitioners.

23. From the above statements and disclosures, the Company seems to have in clear terms stated that "*The ownership of the newspaper "Dainik Bhaskar" has been challenged in the past and we cannot assure you that such persons will not raise any similar or other disputes in future. In the event such disputes are raised and subsequently determined against our Company, the same could have an adverse impact on our reputation and goodwill.*" and that "*The title 'Dainik Bhaskar' also vests with persons other than promoter group*". In short, I find that the Company has stated that the ownership of 'Dainik Bhaskar' has been disputed and that such disputes may arise in the future also, and if such issues are determined against the Company, it may have an adverse impact. It also relevant to note that such disclosures/statements were made under the head "Risk Factors" in the Company's Prospectus. In other words, the dispute to the title of 'Dainik Bhaskar' is mentioned in the Prospectus along with the statement that the title vests with persons other than the promoter group.

24. The applicant has alleged that Writers and Publishers Limited, which has transferred the rights to publish "Dainik Bhaskar" to the Company, lost the Civil Suit No. 74-A/1987 and that the sale deed dated 13.03.1985 was no more in existence when Writers and Publishers Limited transferred the title over "Dainik Bhaskar" to the Company. It is a fact and seems to be an admitted fact that such suit and its dismissal by the concerned Hon'ble Court was not mentioned in the Prospectus by the Company. Against this factual background, it needs to be seen as to what would be the effect on the quality of the disclosures in the Prospectus with respect to the title of Dainik Bhaskar. According to me, the effect may be none as the gist of the facts relating to the said civil suit is '*the dispute regarding the title of Dainik Bhaskar*' and the same has been mentioned by the Company in the Prospectus, as discussed above. In effect, the specific disclosure of the dismissal of the suit no. 74-A/1987 filed by Writers and Publishers Limited may not have made a different impact and such fact would have led only to an indication that the title of the Company is disputed, which anyway was disclosed in the Prospectus as discussed above.

25. The Company has contended that the said litigation (Civil Suit No. 74-A/1987) was not an outstanding litigation to be disclosed in the Prospectus and also that the civil suit filed (*in the year 2013*) by the applicant (*regarding the legality and validity of the sale deed dated 13.03.1985, which is yet to be adjudicated by the competent forum*) came to be filed subsequently to the filing of the Prospectus.

The Company has also submitted that 'the allegation of Writers and Publishers Limited losing the title of 'Dainik Bhaskar' in Civil Suit No.74-A/1987 and the non-existence of the sale deed dated 13.03.1985 before the transfer of title of Dainik Bhaskar (which are points (2) and (3) mentioned in page 7 of the application), are already sub-judice and judicial propriety warrants that such issues are best left untouched to be adjudicated by competent forums'. I find merit in such submissions.

26. Another important fact that I notice is the letter dated 18.06.2004 from the RNI sent to the District Magistrates of Gwalior, Indore, Jhansi, Jabalpur and Bhopal. The contents of the said letter are relevant to be reproduced :

"Dated 18.06.2004

To

*The District Magistrate
Gwalior, Indore, Jhansi, Jabalpur, Bhopal*

SUBJECT : *Implementation of Hon'ble Supreme Court Order dated
7 July, 2003 in the matter of DAINIK BHASKAR, Hindi daily.*

Sir,

I am directed to refer to the matter resting with Hon'ble Supreme Court's verdict dated 7.7.2003 in WP (C) No. 527/93 and to state that the records maintained in this office have been updated in the light of the above mentioned Order. On the basis of the information confirmed by the concerned District Magistrates, the ownership status of 'DAINIK BHASKAR' immediately prior to 29.6.1992 is given below :

<i>S. No.</i>	<i>Place of Publication</i>	<i>Name of the Owner</i>
<i>1.</i>	<i>Gwalior</i>	<i>M/s Bhaskar Publication & Allied Indistry, Gwalior</i>
<i>2.</i>	<i>Indore</i>	<i>M/s Bhaskar Graphic & Printing Arts Pvt. Ltd. Indore.</i>
<i>3.</i>	<i>Jhansi</i>	<i>Shri Sanjay Agarwal</i>
<i>4.</i>	<i>Jabalpur</i>	<i>Shri B.D. Agarwal</i>
<i>5.</i>	<i>Bhopal</i>	<i>M/s Writers & Publishers Limited, Bhopal</i>

*Yours faithfully, sd/-
Assistant Press Registrar (Admn.)"*

The letters also mentions that copies of the aforesaid letter has been forwarded to the legal representatives of Late Shri D.P.Agarwal and also to Mrs. Kishori Devi, Mrs, Hemlata Agarwal and Mrs. Anuradha Agarwal.

27. What is important to be noted about this letter is that the same appears to be valid till date, as submitted by the Company. The Company has also submitted that in the light of this

letter of the RNI which was consequent to the Hon'ble Supreme Court's Order dated 07.07.2003, there was no suppression of any material by the Company in submitting the Prospectus dated 20.12.2009. I also note that the writ petition filed by Mr. Mahesh Prasad Agarwal challenging the letter of RNI was dismissed for laches. The appeal (LPA No. 182/2011) filed by him was also dismissed wherein the Hon'ble Court has mentioned that the appropriate remedy for an injured party would be to approach the Hon'ble Supreme Court by way of contempt of court proceedings. Further, the petition for special leave to file appeal against this order was also dismissed by the Hon'ble Supreme Court. As the assignee for Mr. Mahesh Agarwal, the applicant would be aware of these litigations and their outcome. The Company has also submitted that in another proceeding bearing C.R.No. 38/2013, the Hon'ble High Court of Madhya Pradesh at Gwalior, vide judgment dated 06.05.2013, held by that no court or tribunal except the Hon'ble Supreme Court can set aside the letter dated 18.06.2004 issued by the RNI as the said letter has been issued as a consequence and is a direct fallout of the judgment dated 07.07.2003 passed by the Hon'ble Supreme Court and all the Courts and statutory authority including the trial court are duty bound to act in aid of the said letter.

28. As seen from the statements and disclosures from the Prospectus as mentioned above, the Order dated 07.07.2003 of the Hon'ble Supreme Court and the letter dated 18.06.2004 of the RNI which was issued pursuant to the same, have been mentioned in the Prospectus.

29. Further, I do not wish to delve much into the civil suits filed by Mrs. Kishori Devi (CS No. 1663/2011), Suresh N. Vijay (CS No. 194/2013) and Mr. Mahesh Prasad Agarwal (C S No. 646/2013), as the rights contended by such persons has to be adjudicated by the respective courts.

30. It is important to bear in mind that the instant proceeding is only to judge whether the Company has made proper disclosures regarding the 'title of Dainik Bhaskar' and 'the transfer of windfarm business' in its Prospectus in the light of the allegation of misrepresentation and suppression of facts levelled by the applicant, and not for ascertaining who the title owner of Dainik Bhaskar is.

31. In view of the above discussions, it may not be concluded that the Company has misrepresented or suppressed the facts relating to the title of 'Dainik Bhaskar' in its Prospectus.

32. I also note that in the written submissions, the applicant has alleged that the Company has made "other ancillary vital misrepresentations" in the Prospectus. Such alleged misrepresentations, according to the applicant, are as follows :

- (i) In page 117, the Prospectus made a mis-statement that by Order dated 07.07.2003, the Hon'ble Supreme Court has held the ownership pattern of Dainik Bhaskar as on 29.06.1992, whereas the Hon'ble Court nowhere mentioned it and instead says that the position is relegated prior to 29.06.1992.
- (ii) Reference to page nos. 103 and 115 – for statements pertaining to the windfarm business.
- (iii) Page nos. 118, 120, 121, 122 and 123– dealing with complaints from Mrs. Kishori Devi, Mrs. Hemlata Agarwal, Mr. Mahesh Agarwal, Sanjay Agarwal and Mr. Amit Goel pertaining to the ownership title of Dainik Bhaskar.
- (iv) Page no. 232 *inter alia containing* statements pertaining to the partners of M/s. Dwarka Prasad Agarwal and Brothers. The applicant has stated that an enquiry has to be held as to how the names of Mrs. Kishori Agarwal, Mrs. Hemlata Agarwal and Mr. Mahesh Prasad Agarwal are missing from the list of partners.
- (v) The disclosure that the Company is unable to obtain certain information of one of its promoter group companies, Bhaskar Industries Limited, is a mis-statement as the information could have been obtained from the MCA.
- (vi) Page 56 – Basis of issue price – applicant has alleged that there is no mention about the basis of issue price in page x and there is no working details for the basis of the issue price and that "*Share with book value of Rs.17.86 (page 58) and return on net worth @ 22.74% was valued at Rs.212.00 instead of Rs.15.00 as per CCI formula or valuation norms of 15%.*"
- (vii) Page 116 – certificate of M/s Ajmera and Associates, Chartered Accountants regarding transfer/vesting of publishing and wind energy business of WPL which was approved by Hon'ble Gujarat High Court.
- (viii) Page 117 – applicant has alleged that when Company was incorporated on 27.10.1995, how it could publish any edition of Dainik Bhaskar in late sixties and that even the partnership firm was formed in the year 1972.
- (ix) Page 117 and 128 – allegation that the Hon'ble Supreme Court's Order was mis-stated.
- (x) Page 510 – disclosure of IPO grade (as Grade 4). The applicant has alleged that the rationale given by CARE for such grading was not disclosed.

The applicant has also cited case-laws in support of its submissions.

I have perused the above allegations and note that except for reference to statements at pages 510 and 56 and statement regarding Bhaskar Industries Limited, all the others pertain in one way or the other to the title of Dainik Bhaskar. As stated above, this proceeding is not for adjudging who the lawful title holder of Dainik Bhaskar is. In the interest of the investors, SEBI would only be concerned with whether the Company has made proper and adequate disclosures, in terms of the disclosure guidelines prescribed by SEBI with respect to the statements and disclosures in the Prospectus, made with respect to any material which could have an effect on the investment decision of an investor. The disclosures with respect to the "windfarm business" and "title of Dainik Bhaskar" have already been discussed on the basis of the allegations by the applicant, the submissions made by the Company and the material, i.e., the Prospectus, which is on record and conclusions have been made in the relevant paragraphs above.

33. As regards the allegations pertaining to (i) disclosure with respect to Bhaskar Industries Limited, (ii) issue price and (iii) disclosure of IPO grade, my observations are as under :

(i) Disclosure with respect to Bhaskar Industries Limited :

I note that vide letter dated December 27, 2007 (which is a letter from the lead manager filed along with the Draft Red Herring Prospectus (DRHP) with SEBI), it was indicated that there was non-disclosure of 'Promise vs. Performance' information of Bhaskar Industries Limited (BIL). The said offer document was originally filed under the SEBI (Disclosure and Investor Protection) Guidelines, 2000 ("the DIP Guidelines"). I note that in terms of DIP Guidelines, disclosure regarding "*Last one Issue of group/ associate companies indicating whether all the objects mentioned in the respective offer documents relating to group/ associate companies were met and whether all projections made in the said offer documents were achieved*", was required to be made. Accordingly, clarification was sought from the lead manager with respect to such non-disclosure. In reply, the lead manager stated that, BIL has not retained the copies of its books of account and annual accounts for the Financial Year 1986 to Financial Year 1990, as the Companies Act, 1956, required a company to preserve its books of accounts only for a period of 8 years.

It is also noted that BIL applied to Madhya Pradesh Stock Exchange (MPSE) for the copy of its accounts for the said period and the prospectus of D.R. Enterprises Limited (as BIL was formerly known). While MPSE provided the copy of prospectus, the copy of annual accounts was not available in its records. The copies of the said accounts could not be obtained from the

erstwhile Auditors of BIL. Further, the letters sent to the RoC, Madhya Pradesh, requesting for such information, were not responded to.

The lead manager replied by stating that on the basis of the Prospectus received from MPSE, it is understood that the IPO offering of BIL was for 800,000 equity shares of face value ₹10/- each. The object of the issue was to provide part of finance required for the working capital of the company and to meet the expenses of the issue. Despite the efforts of BIL, information relating to “Promise vs. performance” of the IPO offering of BIL is not available and as stated the cover letter, BIL was in the process of getting delisted.

In view of above, SEBI advised the lead manager vide an observation letter dated July 11, 2008, to update the data relating to BIL as mentioned in the clarification reply i.e. necessary details relating to the to the issue including the object of the issue based on the prospectus and incorporate a suitable risk factor for non-disclosure of the details and also mentioned the reason for such non-disclosures. The said observation letter lapsed on October 11, 2008.

The Company vide letter dated August 12, 2009, re-filed its offer document under the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 ("the ICDR Regulations"). I note that in terms of the ICDR Regulations, the requirement regarding disclosure of performance vis-à-vis objects was modified and the disclosure was required with respect to '*Last one issue of group companies/ subsidiaries / associate companies " shall be given, indicating whether all the objects mentioned in the offer document of the last one issue of each of such companies **during the period of ten years immediately preceding the date of filing draft offer document with the Board were met**".* Accordingly, the lead manager vide clarification reply dated October 06, 2009, stated that the issue of BIL was in 1986 i.e. more than 10 years from the date of DRHP of the company, hence there is no requirement for the Company to disclose the promise vs. performance of BIL in DRHP.

In view of the aforesaid observations, the allegation made by the applicant in this regard seems to have no merit.

(ii) Allegation with respect to the basis for fixing the issue price :

With the abolishing of the Controller of Capital Issues and the enactment of the SEBI Act, 1992, there has been a shift from merit based regime to a disclosure based regime, wherein, investors

are provided with the relevant information relating to Company, for taking an informed decision and there are no pricing restrictions on companies.

The role of SEBI is to ensure that adequate and relevant disclosures as required under the relevant Guidelines/Regulations are made by the company, in order to facilitate the investors to take an informed decision. In terms of the applicable regulatory provisions, the Company in consultation with the BRLMs determines the Issue Price, on the basis of assessment of market demand and on the basis of the qualitative and quantitative factors for the Equity Shares offered by the Book Building Process.

Regulation 28(1) of the ICDR Regulations allows an issuer company to determine the price of the securities in consultation with the lead manager or through the book building process.

Thus, neither the company nor SEBI could determine the appropriate market price as the markets are dynamic in nature and movements are influenced by demand and supply interplays as well as a host of other factors. Movements of stock market also depend on economic factors, domestic and international events, market sentiments, level of floating stock available, corporate performance and future economic growth.

In view of above, I am of the opinion that the applicant's allegation with respect to the *basis of issue price* does not appear to be valid.

(iii) Disclosure of IPO grade :

The applicant has alleged that the rationale for the grading of the IPO was not disclosed in the Prospectus.

In terms of Schedule VIII Part A(2)(VI)(B)(10) of the ICDR Regulations, a company is required to incorporate, all grades obtained for the IPO, the names of all the credit rating agencies from which grading has been obtained for the initial public offer of specified securities, the details of all the grades obtained from such credit rating agencies, the rationale or description of the grading(s) so obtained, as furnished by the credit rating agency(ies). Further, IPO Grading report is also required to be made a part of material documents for inspection. Thus, the requirement for IPO Grading under the ICDR Regulations, indicates that a company is required *inter alia* to disclose the rationale or description of the grading as furnished by the credit rating agency.

On a perusal of the Prospectus of the Company, it is noted that the Credit Analysis & Research Limited ("CARE") has assigned 'IPO Grade 4' indicating 'above average fundamentals' to the IPO of the Company. The Prospectus also contains the letters dated October 05, 2009 and December 04, 2009 addressed to the Company informing that it has assigned such IPO grade. Though, the letters had stated that the rationale for this grading will be communicated separately, the rationale for the IPO Grade seems to be not present in the Prospectus, which appears to be a *prima facie* violation of the relevant provisions of the ICDR Regulations. It may also be noticed that this fresh allegation seems to be unconnected with the main allegations of the applicant in his application.

In this regard, I note that the Hon'ble High Court of Madhya Pradesh has directed SEBI to decide the application of the applicant. The allegation with respect to the 'non-disclosure of the rationale for the IPO Grade' in the Prospectus, was not an allegation that was levelled in the application. This is a fresh allegation which has been alleged by the applicant in his written submissions dated 22.10.2013, which was submitted pursuant to the personal hearing afforded to him. However, in the interest of justice, SEBI is directed to look into this allegation.

34. The applicant has also submitted that SEBI has in the past, pursuant to the directions of the Hon'ble Delhi High Court, vide an order dated 20.10.2011, in the matter of DLF Limited, directed an investigation after hearing both parties. I have considered the facts and circumstances of the DLF case which had made SEBI to decide that an investigation was necessary in that case. It needs to be mentioned here that, in the DLF case, pursuant to the complaint, there were additional material and documents submitted by the complainant and the concerned company, in addition to the original complaint and material enclosed therewith. It was therefore thought appropriate that all such documents and submissions made by the parties be examined and to investigate into the allegations, before coming to a finding by SEBI. However, the same is not the case in the instant matter. The allegation of misrepresentation and suppression of facts, as levelled by the applicant, could be classified under the two broad heads i.e., one pertaining to the transfer of windfarm business to the Company and the other, pertaining to the title to Dainik Bhaskar. Based on the allegations and records already on file, one could conclude whether the disclosures made by the Company were adequate or was there something missing which could have influenced or had an effect on an investor with respect to his investment decision in the Company. This opinion could be arrived at, according to me, without any need for further examination or investigation. Ancillary issues (i.e., the statement regarding Bhaskar Industries

Limited and basis of fixing price) raised by the applicant in his written submissions have also been dealt with in this order itself. With respect to the fresh allegation (*which allegation is not connected with the allegations made in the application*) of non-disclosure of the rationale of the IPO Grade in the Company's Prospectus, SEBI has been directed to look into the same. Therefore, the course of action as directed in the order dated 20.10.2011 of SEBI, which is cited by the applicant, may not be applicable to the facts and circumstances of the case at hand. The facts and scope of the two cases are entirely different.

35. I further note that the applicant has submitted that more violations could be unearthed in the Prospectus. This submission seems to be vague. The applicant has not mentioned any specific allegation or produced any material which may level a fresh allegation against the Company with respect to the disclosures or statements made in the Prospectus. It also needs to be noted that the IPO was completed in the year 2009. SEBI has already made its observations on the offer documents filed with respect to the Company's IPO. Further, the specific allegations made by the applicant in his application and those in the written submissions, have been suitably dealt with in this Order. In the absence of any further specific charge or allegation, the applicant cannot expect SEBI to make a roving inquiry into the contents of the Prospectus. Therefore, this submission does not have any merit in the facts and circumstances of this case.

36. I also note that the applicant, in his written submissions, has sought for the copies of the submissions made by the Company and documents, if any. In this regard, I note that the response dated 20.06.2013 of the lead managers on behalf of the Company was already forwarded to the applicant. I also note that the additional reply is majorly a reiteration of the submissions made by the Company/lead managers in its response dated 20.06.2013. Therefore, in such circumstance, there may not be any prejudice caused to the applicant if such additional submissions are not furnished to the applicant. Further, the documents such as letter dated 18.06.2004 of the RNI, the plaint copies of civil suits filed by Mrs. Kishori Agarwal, Mr. Mahesh Agarwal and the applicant, are either public document or is in the knowledge/possession of the applicant, either by himself or by his assignors. Therefore, I do not find it necessary to furnish the same documents to the applicant. The orders in the Writ Petition filed by Mr. Mahesh Agarwal and the orders in further appeals are also available with the applicant as an assignee of Mr. Mahesh Agarwal. I also note that, as directed by the Hon'ble High Court of Madhya Pradesh on whose directions this proceeding is being conducted, both the parties were afforded with opportunities of personal hearing to make their respective submissions on the application filed by

the applicant. Both the parties have also submitted additional submissions, as stated above. Further, as stated above, the issue that is being dealt with is the adequacy of disclosures under the ICDR Regulations and not the title dispute between the two parties. Submissions made by both parties before SEBI are sufficient for me to reach a conclusion in this regard.

37. I also note that the applicant, in his written submissions, submitted that the promoters of the Company through fraudulent representation got their declaration filed with RNI as owners. With respect to this submission, I note that the writ petition filed by Mr. Mahesh Prasad Agarwal challenging the letter of RNI was dismissed for laches. The appeal (LPA No. 182/2011) filed by him was also dismissed wherein the Hon'ble Court has mentioned that the appropriate remedy for an injured party would be to approach the Hon'ble Supreme Court by way of contempt of court proceedings. Further, the petition for special leave to file appeal against this order was also dismissed by the Hon'ble Supreme Court. In my opinion, this allegation cannot be adjudicated by SEBI as it has already been observed by the Hon'ble High Court of Gujarat that the appropriate remedy for an injured party would be to approach the Hon'ble Supreme Court. Therefore, in this proceedings, such submissions would have no relevance.

38. As regards the allegation of misrepresentation and suppression of facts regarding the title to Dainik Bhaskar, it is observed that the Company has informed the investors in its Prospectus that its title was disputed in the past and such disputes could arise in the future also. It is also observed that the quality of disclosures made in the Prospectus in this regard, may not be higher if the facts pertaining to the dismissal of the Civil Suit no. 74-A/1987 was mentioned in the Prospectus. It is also noted that the Company and the applicant along with his assignors have filed civil suits with respect to the title of Dainik Bhaskar, which are to be decided by a competent forum. In view of the above, there would be no need for any further action by SEBI with respect to the application dated 15.05.2013 filed by the applicant.

39. In view of the foregoing, I, in exercise of the powers upon me under section 19 of the Securities and Exchange Board of India Act, 1992, hereby dispose of the application dated 15.05.2013 filed by the applicant, Mr. Suresh N. Vijay. This decision is made in compliance with the directions of the Hon'ble High Court of Madhya Pradesh made vide Order dated 13.09.2013 in Writ Petition No. 15093 of 2013 read with the Order dated 09.10.2013 in M.C.C. No. 1316 of 2013. As mentioned above in this decision, the allegation that the Company has not disclosed the rationale for the IPO Grade in its Prospectus dated 20.12.2009, which is levelled by the applicant in its written submissions dated 22.10.2013, would be examined by SEBI.

40. Copy of this decision shall be forwarded to the applicant, Mr. Suresh N. Vijay as well as to the company, DB Corp Limited.

**PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**

Date : November 22nd, 2013

Place : Mumbai