

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: PRASHANT SARAN, WHOLE TIME MEMBER**

Order in compliance with the directions dated November 13, 2014 passed of the Hon'ble Securities Appellate Tribunal in Appeal no. 61 of 2014 (Suresh N. Vijay vs. Securities and Exchange Board of India and DB Corp Limited)

Dates of personal hearing: May 05, 2015 and June 12, 2015

Appearance:

1. For the applicant, **Suresh N. Vijay**: Mr. Amalpushp Shrotri, Advocate and Mr. M.D. Nair.
 2. For **SEBI**: Dr. Anitha Anoop, Deputy General Manager, Mr. Sanjay Sarawade, Assistant General Manager, Mr. N. Murugan, Assistant General Manager and Mr. T. Vinay Rajneesh, Assistant General Manager.
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1. This proceeding is in compliance with the directions of the Hon'ble Securities Appellate Tribunal ("Hon'ble SAT") passed in the Order dated November 13, 2014 in Appeal No. 61 of 2014 (Suresh N. Vijay vs. Securities and Exchange Board of India and DB Corp Limited). The Hon'ble SAT had directed as follows:

"10. In these circumstance, without expressing any opinion on merits we set aside the impugned order dated November 22, 2013 and restore the matter back to the file of the WTM of SEBI for fresh decision on merits and in accordance with law. SEBI is directed to furnish copies of the reply/ documents furnished by respondent no. 2 to the appellant and hear the appellant and respondent no. 2 company on any convenient date and pass appropriate order on merits as expeditiously as possible. Needless to state that if any rejoinder is filed by the appellant, copy of that rejoinder shall be served on the respondent no. 2 company by SEBI before the date of personal hearing.

11. We make it clear that we have not expressed any opinion on the merits of the case and contentions of both parties are kept open. Directions contained herein to hear both the complainants and the company while disposing of the complaint being peculiar to the facts of present case, the same shall not be treated as precedent.

12. Appeal is disposed of in above terms with no order as to costs".

2. Before proceeding, it is necessary to refer to the facts of the case. One **Mr. Suresh N. Vijay** ("the **applicant**" – the appellant in Appeal no. 61/2014 before the Hon'ble SAT) filed an application

dated May 15, 2013 (“the **application**”) with the Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) alleging certain non-disclosures and misrepresentation in the **Prospectus** dated December 20, 2009 of the company, **DB Corp Limited** (“the **Company**” or “**DB Corp**”) and requested SEBI to take action as mentioned therein. The following were *inter alia* the averments/allegations made in the application:

- (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*).
- (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 (“**WPL**”) into DB Corp 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. WPL) had been transferred to the resulting company i.e., DB Corp. However, in the Prospectus dated 20.12.2009, the Company had misrepresented, at several places, that the "wind farm" business of WPL was also transferred to it under the Scheme approved by the Hon'ble High Court of Gujarat vide Order dated 22.12.2006. It was apparent that the wind farm business of WPL was not transferred to the Company and yet the public money had been 'pocketed' by the Company upon such misrepresentation.
- (iv) Even with respect to the "publication business" of Writers and Publishers Limited, the Company has not informed the public in general that WPL 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. Dwarka Prasad Agarwal - 25%
 2. Bishambar Dayal Agarwal - 30%
 3. Mahesh Prasad Agarwal - 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 WPL for a consideration of ₹5,00,000/- for a period of 10 years.
- 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 – **WPL** learnt that Mr. Dwarka Prasad Agarwal did not give any such authorisation in writing on behalf of the partnership firm. 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.

- f) 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.
- g) 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".
- h) In view of the same, the Civil Suit No. 74-A/1987 was filed by WPL (the plaintiff) for the following relief :
 - (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.
- i) 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 WPL.
- (v) 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.
- (vi) 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, WPL 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, WPL 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 WPL 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 WPL 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 WPL was also transferred to it under the scheme approved by the Hon'ble High Court of Gujarat vide Order dated 22.12.2006;
 - b) WPL 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 WPL had lost its title over 'Dainik Bhaskar' much before it was transferred to the Company.
- (xiii) According to the applicant, 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, vide email dated June 14, 2013 forwarded the aforesaid application to the Book Running Lead Managers (BRLMs) 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 with a copy to SEBI. The lead managers confirmed that the reply and clarifications provided by the Company are satisfactory and confirmed that all relevant disclosures have been made in the Prospectus, which were in compliance with the spirit and text of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 ("the **ICDR Regulations**"). SEBI, on a perusal of the contents of the response, concluded that the reply was in order and the case did not warrant further action.

4. Aggrieved by this, the applicant filed a Writ Petition (No. 15093 of 2013 - Suresh N. Vijay vs. (1) Union of India, (2) SEBI and (3) DB Corp) 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 an Order dated September 13, 2013, wherein the following direction :

" 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.

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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]

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. "

5. In compliance with the directions of the Hon'ble High Court, the applicant and the Company were afforded an opportunity of personal hearing on October 11, 2013. On the said day, the applicant through his Advocate, Mr. Amalpushp Shrotri, 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.

6. As regards the Company, a request was made on the date of the hearing vide letter dated October 11, 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 November 01, 2013 and thereafter to November 08, 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. 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 (filed during the hearing). 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 *inter alia* 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 WPL 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) According to the Company, 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. The Company submitted that in the said 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. The Company submitted that the 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 of its submissions, the Company prayed that the application be dismissed with costs as it is misconceived and unsubstantiated.

7. On a consideration of the material available on record and the submissions made by the parties, SEBI, vide its Order dated 22.11.2013, for the reasons and observations made therein, decided the application as follows:

“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. ”.

8. Thereafter, the applicant, Mr. Suresh N. Vijay filed an appeal in Appeal no. 61 of 2014 before the Hon'ble SAT), which was disposed of vide Order dated 13.11.2014, as mentioned in paragraph 1 above. In compliance with the directions of the Hon'ble SAT, the additional reply (undated) and material filed by the Company was forwarded by SEBI (vide letter dated 08.01.2015) to the applicant/his counsel. As

further directed by the Hon'ble SAT, personal hearing was afforded to both the parties together on **12.03.2015**. The personal hearing in the matter was scheduled on the aforesaid date as mutually agreed to by Mr. Suresh N. Vijay and DB Corp Ltd. and their respective counsel. The record of proceedings of the hearing held on 12.03.2015 is reproduced below:

“.....

4. *The counsel for Suresh N. Vijay intended to file his rejoinder (to the additional reply of DB Corp) today in the hearing. However, in order to allow the parties to make complete submissions and rejoinders to the submissions made by the other party and also to avoid submissions being made in a 'piece meal manner', the counsel for Suresh N. Vijay was advised that he may file his comprehensive submissions along with all material that he may wish to rely upon in the matter on March 26, 2015 at 02:30 pm and shall furnish copy of the same to DB Corp/its counsel. Likewise, DB Corp shall, on receipt of such submissions, file its rejoinder (with all supporting documents) to the same on April 08, 2015 at 02:30 p.m., with a copy to Suresh N. Vijay/his counsel.*
5. *The schedule of further personal hearing in the matter shall be intimated to the parties on completion of the above.”*

9. On **26.03.2015**, Mr. Amalpushp Shrotri (the Advocate for the applicant) and Ms. Anita Gokhale, Company Secretary of DB Corp appeared before me. The Advocate for the applicant filed Written Submissions dated 26.03.2015 and a copy of the same was tendered to the Company's representative. The Advocate requested that if any new material was brought out in the rejoinder to be filed by the Company, an opportunity be afforded to the applicant to make submissions on such material. **The following *inter alia* are the submissions made in the aforesaid Written Submissions of the applicant:**

- (a) These submissions were in addition to those submitted vide the application dated May 15, 2013.
- (b) The issue relating to the title of the Hindi Newspaper “Dainik Bhaskar” was decided by the Hon'ble Supreme Court vide Judgment dated July 07, 2003 reported in (2003) 6 SCC 230. The Hon'ble Supreme Court in paragraph 40 has passed the following order:
“40. We are, therefore, of the opinion that the interest of justice would be subserved if the appeals and the writ petition are allowed and the impugned orders dated 29-6-1992 and 13-11-1992 passed by the High Court as also the order dated 3-9-1992 passed by the first respondent, Registrar, Newspapers for India, are quashed. All actions taken and all orders passed by the statutory authorities and the civil courts as referred to hereinbefore shall

also stand quashed. As a logical corollary to our order, it must also be held that the writ petition filed by late Bishambhar Dayal Agarwal does not survive and must, therefore, be dismissed. The consequence of this order would be that the parties shall be relegated to the same position in which they were immediately prior to the passing of the order dated 29-6-1992. All parties, statutory authorities and courts including the civil courts are directed to act accordingly.”

According to the applicant, -

- (i) Alleged ratification of sale deed dated 13.3.1985 was declared a nullity;
 - (ii) Alleged ratification of dissolution of partnership firm was declared a nullity;
 - (iii) RNI Order dated 3.9.1992 declaring WPL as owner of Dainik Bhaskar was declared a nullity;
 - (iv) WPL was not the owner of Dainik Bhaskar and the firm M/s. Dwarka Prasad Agarwal and Bros was the owner; and
 - (v) Civil Suit nos.74-A/1987, 75-A/1987 and 57-A/1988 revived and the District Court, Bhopal was directed to proceed further with the same.
- (c) According to the applicant, the effect of the judgment dated 07.07.2003 was that fraudulent acquisition of title of “Dainik Bhaskar” by WPL through settlement dated 29.06.1992 was set-aside and WPL was asked to establish its title based on sale deed dated 13.03.1985 in Civil Suit No.74-A/1987 inasmuch as Hon’ble Supreme Court revived the Civil Suit No. 74-A/1987 as is evident from paragraphs 37 and 40 of the Judgment. The said civil suit is still pending before the District Court, Bhopal.
- (d) In order to nullify the effect of the Judgment and to continue with its illegal activity of printing and publication of Dainik Bhaskar newspaper, WPL hatched another conspiracy in the State of Gujarat and took following steps:
- (i) In November 2005, both WPL and Multi-Tech Energy Limited (later named DB Corp) passed necessary resolutions and applied for change of registered office from Bhopal to Gujarat. This was done with the objective of avoiding attention of the rightful owners of the newspaper ‘Dainik Bhaskar’ who were litigating before the courts/statutory authority at Bhopal.

- (ii) Another resolution dated 28.11.2005 was passed to change the name of “Multi-Tech Energy Limited” to “DB Corp Ltd.”. This was also done to avoid attention of rightful owners and to project a new name before the public at large and to evade disclosure about the past history and litigations pertaining to the promoters.
- (iii) The Scheme of Arrangement was prepared to project demerger and transfer of the publishing business of WPL to DB Corp together with the purported right to print and publish the newspaper “Dainik Bhaskar” along with the registrations under Press and Registration of Books Act, 1867. Under the Scheme, only the publishing business of WPL was to be demerged. The Scheme did not disclose the fact that several proceedings and/or civil litigations were pending against WPL and its promoters Mr. Ramesh Chandra Agarwal regarding ‘Dainik Bhaskar’. The Scheme does not disclose that pursuant to the Judgment and Order dated 07.07.2003 of the Hon’ble Supreme Court, the registration of WPL for the newspaper ‘Dainik Bhaskar’ made by the Registrar of Newspapers (RNI) was quashed and set-aside. The fact regarding withdrawal of Civil Suit No. 74-A/1987 filed before the Additional District Judge, Bhopal was also not mentioned. The Scheme was made only to create an illusion of transfer of right to print and publish newspaper “Dainik Bhaskar” which never legally existed with WPL.
- (iv) On 04.05.2006, WPL filed a Company Application No.267/2006 for a direction/order for dispensation of meeting of equity shareholders and preference shareholders on the ground that the shareholders have already given consent letters for sanction of Scheme of Arrangement. Similarly, Company Application no. 268/2006 was filed by DB Corp for an order for dispensation of meeting of equity shareholders as consent letters for sanction of the Scheme were received. The said Company Applications were allowed vide Order dated June 13, 2006 of the Hon’ble High Court. Even though Late Dwarka Prasad Agarwal was a shareholder of the Company, no communication regarding the Scheme was sent to his address or to his legal heirs. It was obviously to conceal the facts about the Scheme from the parties litigating for the newspaper titled “Dainik Bhaskar”.
- (v) On 27.07.2006, WPL filed a Company Petition No.126/2006 for sanction of the Scheme of Arrangement. The petition was admitted vide Order dated 31.07.2006 and the notice of hearing was ordered to be published in local newspaper having circulation in Ahmedabad, Gujarat. Similarly, DB Corp filed Company Petition No. 127/2006 for an Order under section 394 of the Companies Act, 1956 for sanction of the Scheme. The

legal heirs of Late Shri Dwarka Prasad Agarwal and the predecessor-in-title of the applicant were residing at Delhi and Gwalior and hence had no occasion to have come across the publication of notice of the petition.

- (vi) In the absence of adequate and proper disclosures regarding the pending litigations against the demerged company, the Scheme got sanctioned by the Hon'ble High Court of Gujarat. The entire proceeding of sanction of the Scheme right from the filing of the Company Application No.267/2006 till order of sanction under section 394 of the Companies Act, 1956 was completed swiftly within a period of 5 months and an Order was passed by the Hon'ble Court on October 10, 2006.

After the Scheme was sanctioned by the Hon'ble Company court, DB Corp floated a public issue of 1,81,75,000 equity shares of Rs.10/- each at the issue price of Rs.212/- per equity share. The equity shares were offered for subscription through a **Prospectus** dated **20.12.2009** as per section 60B of the Companies Act, 1956. In the Prospectus, under the head 'History and Certain Corporate Matters', it was *inter alia* mentioned as under:

"WPL Demerger

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 ("WPL Demerger").

The scheme of arrangement of WPL Demerger provides that with effect from April 1, 2005 ("Appointed Date") the business of publication, including the assets and liabilities, intellectual property rights, employees and printing of newspaper under the title 'Dainik Bhaskar' and 'Divya Bhaskar' shall stand transferred in our Company as a going concern. Further the scheme of arrangement of the WPL Demerger provides that the ownership of all land and buildings shall continue to be in the name of WPL with our Company having the right to use the immovable property by way of lease or leave and license. For details on the lease agreements with WPL refer to section titled "Our Business" beginning on page 79. The WPL Demerger became operative from December 12, 2006."

- (e) The applicant reiterated that in view of the judgment of the Hon'ble Supreme Court of India dated 07.07.2003, WPL did not have even a semblance of right to print and publish newspaper

under the title 'Dainik Bhaskar'. A right which did not exist at all with WPL cannot under a Scheme of Arrangement be transferred to and/or vest in the resulting company in as much as it is settled law that order of demerger is not a document of title. Under the Scheme, no right to print and publish newspaper under title 'Dainik Bhaskar' could be said to be transferred to DB Corp. Despite this, the Company through its prospectus for public offer represented before public at large that the entire business of 'Dainik Bhaskar' with all editions was transferred to it with effect from 01.04.2005. The same amounted to misrepresentation in Prospectus and was in violation of the Companies Act read with the SEBI Act. The Company had also suppressed the relevant fact regarding the proceedings in civil litigations pending against WPL in the Prospectus and hence full disclosure is not made therein.

- (f) M/s. Dwarka Prasad Agarwal & Brothers (partnership firm) is the owner of the newspaper titled 'Dainik Bhaskar' and therefore the goodwill associated with the said name is also the property of the partnership firm. However, by suppressing material facts, DB Corp had gathered money from the public under the name of 'Dainik Bhaskar'.
- (g) By virtue of the Deed of Assignment dated 24.02.2010, Smt. Kishori Devi and her daughter Smt. Hemlata Agarwal, who received all properties of Late Dwarka Prasad Agarwal under Will, assigned all rights, title, interest and liabilities in the business and affairs of the daily Hindi newspaper 'Dainik Bhaskar' with all its editions all over India to the applicant. Similarly, Mr. Mahesh Prasad Agarwal also assigned all rights, title, interest and liabilities in the business and affairs of the newspaper 'Dainik Bhaskar' with all its editions all over India to the applicant.
- (h) Vide the aforesaid deed of assignment, Smt. Kishori Devi, Smt. Hemlata Agarwal and Mr. Mahesh Prasad Agarwal assigned their respective shares and rights, title and interest in the partnership firm, M/s. Dwarka Prasad Agarwal & Brothers and their respective shares and rights, title and interest in Bhaskar Publication and Allied Industries Pvt. Ltd. and Bhaskar Graphics & Printing Arts Pvt. Ltd. including all intellectual property rights in the same on 'as is where is basis' as also regarding right, title and interest in the other properties owned by Late Shri Dwarka Prasad Agarwal to the applicant in terms of the covenants laid down in the deed. Hence, the applicant has 55% share in the partnership firm as on 24.02.2010.
- (i) At the time of execution of the assignment deed on 24.2.2010, the applicant was not aware about the Order dated 10.10.2006 passed by the Hon'ble High Court of Gujarat in Company Petition nos. 126/2006 and 127/2006. The applicant was also not aware of the order dated 22.12.2006 passed in Company Application no. 667/2006. The applicant did not have any opportunity to

object to the Scheme when it was under consideration of the Hon'ble High Court. Only after going through the record of Company Petition no. 126/2006 and other connected matters, the applicant became aware about the schematic strategy of Mr. Ramesh Chandra Agarwal, the Chairman of WPL.

- (j) In the Prospectus, DB Corp *inter alia* made the following material misrepresentation/suppression and thereby breached its obligations under the ICDR Regulations particularly regulation 57:
1. That WPL had filed Civil Suit No. 74-A/1987 claiming ownership of newspaper 'Dainik Bhaskar' which was pending as per the judgment dated 07.07.2003 passed by the Hon'ble Supreme Court and WPL has yet to establish its title over Dainik Bhaskar;
 2. That WPL got 'Dainik Bhaskar' through sale deed dated 13.03.1985 which was its nucleus of title;
 3. That windfarm business of WPL was also transferred to DB Corp under the scheme approved by Hon'ble High Court of Gujarat vide order dated 22.12.2006.
- (k) Through the Prospectus, DB Corp claimed the right to print and publish 'Dainik Bhaskar' with all its editions in India, which was never ever claimed by WPL in litigations at Bhopal. DB Corp claimed a purported right which was neither possessed nor claimed for by its predecessor WPL.
- (l) DB Corp collected money from public under its public offer on the strength of the name and goodwill of the newspaper 'Dainik Bhaskar' which is the property of the firm. Both DB Corp and WPL have resultantly cashed in and capitalized on the goodwill associated with the title 'Dainik Bhaskar' which is the property of the firm M/s. Dwarka Prasad Agarwal & Brothers.
- (m) Vide order dated 07.05.2013, the First Additional District Judge, Bhopal, declared C.S. No.74-A/1987 to be abated and refused to allow the applicant's application for being impleaded in the suit for want of DB Corp's application for such proceeding, which ought to have been done as per the Order of the Hon'ble Supreme Court. Consequently, WPL could no longer claim any ownership rights of the title of Dainik Bhaskar against the legal heirs of Late Shri Dwarka Prasad Agarwal and thereby against the applicant. As the aforesaid civil suits are pending, the applicant is not commenting on the merits of the claim of the applicant and reserves his right to enforce

the same in the civil suit. This Order was within the knowledge of WPL and DB Corp and yet the same has not been challenged by them and for want of the same, the order dated 07.05.2013 has attained finality.

(n) The applicant thereafter made the instant application dated 15.05.2013 to SEBI and requested for an enquiry and to direct the Company to :

- (i) Submit its explanation on such misrepresentation/suppression;
- (ii) Produce an original copy of the sale deed dated 13.03.1985; and
- (iii) Produce the entire account of public money collected through its public issue dated 20.12.2009.

(o) Vide letter dated 20.06.2013, the Book Running Lead Managers in the IPO of the Company have incorrectly attempted to justify the misrepresentation and suppression of information in the Prospectus. It has been *inter alia* stated that-

- (i) Prospectus had “disclosed details of all litigations and disputes existing as on the date of the Prospectus”;
- (ii) The title over Dainik Bhaskar had been disclosed as per the directions of the Supreme Court vide order dated 07.07.2003;
- (iii) Risk factor highlighting the past dispute over the title of Dainik Bhaskar had been disclosed; and
- (iv) A summary of various complaints about the title of Dainik Bhaskar received pursuant to the filing of RHP, along with Company’s response thereto had also been disclosed.

According to the applicant, the response had failed and neglected to address the main issue about suppression of the various pertinent issues raised by the applicant in the preceding paragraphs which clearly evidence that the Company could never have claimed to have any right, title or interest in Dainik Bhaskar.

(p) The following were the submissions of the applicant with respect to the additional reply (undated) filed by the Company in the personal hearing held on 08.11.2013:

- (i) Regarding the submission of the Company that in the order dated 22.12.2006 of the Hon’ble Gujarat High Court, the windfarm business of WPL stood transferred to the Company, the applicant submitted that the same was incorrect as the Order of the

Hon'ble Court was confined only to the publication business. The definition of "*Publishing Business*" given in clause 1.9.1 of the Scheme of Demerger itself shows that the windfarm business of WPL was never transferred to the Company and that only such assets of the windfarm project as pertaining to the publishing business were transferred.

Clause 1.9 reads as "*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 publishing business including that of the wind farm project of the Demerged Company..."

The applicant contended that the windfarm business of WPL had not been transferred to the Company and it has taken public money *inter alia* based on such misrepresentation.

- (ii) Regarding the statement that there was no dispute pending pertaining to the title "Dainik Bhaskar" on the date of the Prospectus, the applicant submitted that the same was false as the Civil Suit no.74-A/1987 was revived as per the Order dated 07.07.2003 of the Hon'ble Supreme Court. As the civil suit was pending, the same required disclosure as per rule 57(2)(a)(ii) read with Part A, Item IV(H)(24), XA(1)(g) and XA3(a) of Schedule VII of the ICDR Regulations. After revival of the civil suit, DB Corp has not taken any steps in the suit and therefore WPL has not established its title over Dainik Bhaskar before the District Court, Bhopal and the Company has mobilized hundreds of crores through the public issue in question.
- (iii) Regarding Order dated 08.12.2003, the applicant does not make any submission as the same is sub-judice in Writ Appeal no. 438/2013 before the Hon'ble High Court of Madhya Pradesh Principal Seat at Jabalpur, wherein the same has been challenged on the ground of being obtained by playing fraud on the court without disclosing the Judgment dated 07.07.2003, which infact was applicable on the dispute of Dainik Bhaskar relating to Gwalior.
- (iv) Regarding submissions with respect to the RNI letter/order dated 18.06.2004, the applicant submitted that it is incorrect to state that the said order was issued in compliance of the Order dated 07.07.2003 as there was no such direction issued to the RNI. Further, in catena of judgments of the Hon'ble Supreme Court and High Courts, it has been held

that order recording ownership by the RNI is not the document of title. Therefore, WPL, the predecessor-in-title of the Company is yet to establish its title and reliance of DB Corp on the order dated 18.06.2004 as its document of 'title' is misplaced.

Therefore, relying on the said order without disclosing the factum of pendency of the civil suit no. 74-A/1987 is gross misrepresentation.

- (v) Regarding sale deed dated 13.03.1985, the applicant submitted that it is false that the same was a subject matter of Civil Suit no.194-A/2013 filed by the applicant before the District Court, Bhopal. As a matter of fact, sale deed dated 13.03.1985 was the basis on which title over Dainik Bhaskar was claimed by WPL in Civil Suit no. 74-A/1987. Considering but not admitting for sake of argument that the sale deed dated 13.03.1985 is subject matter in Civil Suit no. 194-A/2013 and therefore no finding on such sale deed could be given by SEBI, the applicant submitted that the *“sale deed became subject matter of the Civil Suit no. 194-A/2013 in the year 2013 and therefore, there was no impediment in not disclosing the same in the Prospectus in the year 2009 and produce such sale deed dated 13.03.1985”* before SEBI as per rule 57(2)(a)(ii) read with Part A, Item 1(a) and XVI(A)(a) & (2) of Schedule VII of the ICDR Regulations. Further, DB Corp has admitted that sale deed dated 13.03.1985 was the document of title of WPL over Dainik Bhaskar.
- (vi) Regarding cases filed by Mahesh Prasad Agarwal challenging the order dated 18.06.2004, the applicant submitted that the same were filed without any knowledge of the applicant and not binding on him. Without prejudice to it, it was submitted that none of the orders were on merits and have no bearing on the present application in view of the Judgment dated 07.07.2003 of the Hon'ble Supreme Court. The applicant further submitted that the Hon'ble Supreme Court in paragraph 7 of the Order dated 07.07.2003 has specifically recorded that the ownership status of Dainik Bhaskar was changed by the RNI on or about 03.09.1992 from M/s. Dwarka Prasad Agarwal & Brothers to WPL and therefor the contention of DB Corp that WPL was recorded owner of Dainik Bhaskar as on 29.06.1992 is not only false but also totally baseless.
- (vii) Regarding Civil Suits filed by Smt. Kishori Devi and Hemlata at Delhi and Mahesh Prasad Agarwal at Jhansi are concerned, the applicant submitted that the Company has admitted

in paragraph 4.34 of the Transfer Petition No.1131/2013 before the Hon'ble Supreme Court that such suits were filed without disclosing the assignment deed and therefore such suits have no bearing on the present application. A perusal of the Transfer Petition no. 1131/2013 would reveal that DB Corp and its Chairman, Ramesh Chandra Agarwal have relied upon the deed of assignment dated 24.02.2010 and used the same for their benefit. All civil suits have been transferred to Bhopal vide order dated 28.02.2014 for adjudication with Civil Suit no. 194-A/2013 filed by the applicant.

- (viii) Regarding the allegation of DB Corp in point nos. (b) and (c) {*ref. to civil suit no.74-A/1987 and sale deed dated 13.03.1985*} being sub-judice in civil suits, the applicant submitted that the same is false and incorrect. According to the applicant, the same were issues in the instant application and deserves to be adjudicated.
 - (ix) Regarding judgment dated 06.05.2013 (*in C.R. No. 38/2013 - vide this judgment, the Hon'ble High Court of Madhya Pradesh at Gwalior held 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*), the applicant submitted that the same has no bearing on the present application in as much as 18.06.2004 is not an issue in the present application.
 - (x) Regarding the issue of propriety of adjudication of point nos. (b) and (c), the applicant submitted that propriety demands that in public interest and in the interest of investors, such points should be decided in the instant application as DB Corp has 'pocketed' public money without any title over 'Dainik Bhaskar'.
 - (xi) Regarding point nos. (b) and (c) being not in existence at the time of submission of Prospectus, the applicant submitted that the same is false as they were very much in existence at the time of submission of Prospectus and warranted disclosure by the Company as per rule 57(2)(a)(ii) read with Part A, Item IV(H)(24), XA(1)(g) and XA 3(a) of Schedule VII and rule 57(2)(a)(ii) read with Part A, item 1(a) and XVI(A)(1) & (2) of Schedule VII of the ICDR Regulations.
- (q) According to the applicant, apart from the above misrepresentation/suppression, the following ancillary misrepresentation were made by the Company in its prospectus:

- (i) In Section II – Risk Factors on page xii para 2, it was stated:
“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.”
- The same was a false and misleading statement inasmuch it is none other than WPL which challenged the ownership of the newspaper ‘Dainik Bhaskar’ and filed Civil Suit No. 74-A/1987 before the District Court, Bhopal seeking declaration of title over Dainik Bhaskar. It is because of this reason that it has not been mentioned anywhere as to who were the persons who challenged the ownership of newspaper ‘Dainik Bhaskar’ in the past and the case numbers, if any. The promoters through a fraudulent representation got their declaration filed with RNI and others. It is settled law that declaration filed before the RNI is not the documents of title. The Prospectus rightly apprehended challenge to their ownership claim by certain relatives of one of the promoters. The Hon’ble Supreme Court by its Order had relegated the position prior to passing of the Order dated 29.06.1992 and not as on 29.06.1992. Thus, there was a fraudulent statement by the promoters in the Prospectus.
- (ii) Section II – Risk Factors – at page xxviii para 44 mentions –
“Our Company is unable to obtain certain information of one of its Promoter Group Companies, Bhaskar Industries Limited.
One of our Promoter Group companies, Bhaskar Industries Limited was listed on the Madhya Pradesh Stock Exchange in April 1986. However due to non availability of information with respect to its objects and promise vis-à-vis performance we have not been able to disclose the same in Red Herring Prospectus.”
- (iii) On page 56 – Basis for Issue price, it was stated on page 59 that *“The BRLMs believes that the Issue Price of Rs.212 is justified in view of the above qualitative and quantitative parameters. For further details, see the section titled ‘Risk Factors’ on page x and the restated financials of the Company including important profitability and return ratios, as set out in the section titled ‘Restated Financial Statements’ beginning on page F1 of this Prospectus to have a more informed view.”*
- On page x there was no mention about the basis of issue price. On page F4, there was no working details of the basis of the issue price. Thus, the Prospectus played a fraudulent

game on the investors by referring to unrelated pages. Share with book value of Rs.17.86/- and return on net worth @ 22.74% was valued at Rs.212/- instead of Rs.15/- as per CCI formula or valuation norms of 15%.

- (iv) On page no. 103, it was stated that DB Corp owns windmills with a total rated capacity of 4.50 MW in Madhya Pradesh. The electricity generated at its wind farm is currently sold to the State Electricity Board pursuant to a power purchase agreement with a 20 year term.

On page 110, Ajmera and Associates, CA have certified Transfer/Vesting of publishing and wind energy business of WPL which was approved by the Hon'ble Gujarat High Court. As per the High Court's order modified on 22.12.2006, no windmill business stood demerged. Thus, the chartered accountant are in collusion with the promoters and have rendered themselves punishable u/s 68 of the Companies Act.

On page 115, it was stated that the entire publication business and windfarm business of WPL was transferred to DB Corp. As per the High Court's order dated 22.12.2006 only publishing business was demerged. Appointed date of demerger is 01.04.2005 and effective date of demerger is 12.12.2006. The date is wrongly mentioned as WPL was allotted 21,36,550 equity shares prior to the Scheme coming into effect from 22.12.2006.

- (v) On page 117, the Prospectus made a mis-statement that by the Order dated 07.07.2003, the Supreme Court has held that the ownership pattern of Dainik Bhaskar as on 29.06.1992, whereas the Supreme Court order nowhere mentioned it and instead says that the position is relegated prior to passing of the order of 29.06.1992. This was a deliberate misstatement, misrepresentation and fraudulently inducing persons to invest money.

- (vi) On page 117 of the Prospectus, under the heading 'History of our Company', it was stated "*The first edition of Dainik Bhaskar was published in Madhya Pradesh in the late sixties*". The Company was incorporated on 27.10.1995. Therefore, how could it publish any edition in late sixties. Even DP Agarwal & Bros, the owners of Dainik Bhaskar was formed as a partnership firm in 1972. This statement amounts to a fraudulent practice.

- (vii) On page 117, - History of our company, it was further stated-

“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:”

The whole paragraph was a fraudulent statement as the Hon’ble Supreme Court judgment does not say as on June 29, 1992 but says relegated to the position prior to 29.06.1992. RNI was grossly misrepresented by the promoters. It was nowhere directed that the RNI had to restore the position as on 29.06.1992. The direction with regard to relegating the parties to the same position as obtaining prior to passing of the order dated 29.06.1992 was regarding the civil suits, which were withdrawn as per the order dated 29.06.1992 as mentioned in para 10 of the judgment dated 07.07.2003. Para 10 is reproduced – *“10. Pursuant to or in furtherance of the said order dated 29.06.1992 recording the purported settlement, applications were filed in Suits nos. 74-A of 1987 and 75-A of 1987 in Bhopal by M/s Writers and Ramesh Chandra Agarwal for withdrawal thereof, whereupon the suits were dismissed. Bishambhar Dayal Agarwal also, who had filed Suit No. 57-A of 1988, moved an application to the effect that pursuant to the compromise the suit be dismissed. This plea was also accepted.”*

In so far as RNI was concerned, he was required to restore the position as on 03.09.1992, which was clear from paras 7 and 40 of the judgment dated 07.07.2003. Relevant extracts of said paras as below:

“7. Pursuant to or in furtherance of the said purported compromise, RNI altered the name of the owner of the title Dainik Bhaskar in his Register from the firm to M/s. Writers on or about 03.09.1992.....”

“40. We are, therefore of the opinion that the interest of justice would be subserved if the appeals and the writ petition are allowed and the impugned orders dated 29.06.1992 and 13.11.1992 passed by the High Court as also the order dated 03.09.1992 passed by the first respondent, Registrar, Newspapers for India, are quashed.”

From a conjoint reading of the afore-quoted para 7 and 40, it is evident that on or about 03.09.1992 i.e. even after passing of the order dated 29.06.1992, the firm M/s. Dwarkaprasad Agarwal & Brothers was registered as owner of the title Dainik Bhaskar in the record of RNI and pursuant to the order dated 29.06.1992, the ownership was changed from the firm to WPL. This

order dated 03.09.1992 was challenged directly before the Hon'ble Supreme Court in W.P.(C) No. 527/1993 as is evident from para 11 of the judgment:

“11. Dwarka Prasad Agarwal filed Writ Petition No. 527 of 1993 in this Court questioning the aforementioned order dated 3-9-1992 passed by RNI wherein inter alia the following reliefs were prayed for:

- (a) *Issue writ, order or direction quashing the order dated 3-9-1992 whereby the Registrar, Newspapers has changed the name of the owner of the title Dainik Bhaskar from M/s D P Agarwal and Brothers to M/s Writers and Publishers Private Limited ...”*

As order dated 03.09.1992 was set-aside, RNI was enjoined to record the firm M/s Dwarkaprasad Agarwal and Brothers as owner of the title Dainik Bhaskar as prevailing on 03.09.1992. Further, till 03.09.1992, the firm was registered as owner of the title Dainik Bhaskar as recorded by the Hon'ble Supreme Court. Therefore, how could there be five owners as on 29.06.1992 as recorded by RNI in its order dated 18.06.2004.

- (viii) On page 118, Kishori Devi alleged that Mr. R.C. Agarwal has fraudulently executed a fake sale deed for selling the business of Dwarka Prasad Agarwal & Brothers. On the basis of this deed, Mr. R. C. Agarwal transferred the ownership to the title Dainik Bhaskar to WPL who are unlawfully enjoying the ownership of the title. On pages 120, 121, 122 and 123, Ms. Hemlata Agrawal, Mr. Mahesh Prasad Agrawal, Mr. Sanjay Agrawal and Mr. Amit Goel respectively have alleged that the Company had concealed several facts in the DRHP relating to the ownership status of the title Dainik Bhaskar. In reply, the Prospectus on pages 119, 120, 121, 122 and 123 stated that Order dated 07.07.2003 of the Hon'ble Supreme Court has held that the position is restored immediately prior to the passing of the order dated 29.06.1992 which means that the settlement agreement ratifying the agreement to sell dated 13.3.1985 and dissolution of partnership firm has been held bad and the order of the court had been set aside. Thus, statement made in the Prospectus is grossly misleading to the effect that the order of the court has been upheld.
- (ix) On page 128, there was a misstatement regarding the Order dated 07.07.2003 of the Hon'ble Supreme Court under the heading “Other material agreements”.
- (x) Under the related party transactions, on page 232, the partners of Dwarka Prasad Agarwal & Brothers as on 30.09.2009 is shown in which Mr. Ramesh Chandra Agarwal is one of

the partners. Enquiry has to be made as to how partnership changes took place and as to why Mr. Mahesh Prasad Agarwal, Hemlata Aharwal, Kishori Devi are missing from the list. The promoters stated in the prospectus are:

1. Ramesh Chandra Agarwal
2. Sudhir Agarwal
3. Girish Agarwal
4. Pawan Agarwal
5. Nitin Malhan
6. Kailash Chand Chaudhary
7. Ajay Pairamal
8. Piyush Pandey
9. Harish Bijoor
10. Ashwini Kumar B. Singhal

All the above persons were guilty of fraudulently inducing persons to invest money and are punishable with imprisonment u/s 68 of the Companies Act, 1956.

- (xi) Grading is mentioned as Grade 4. CARE had issued the rationale for the rating. However, this rating has not been disclosed.

The applicant submitted that the above instances and misrepresentations/suppression are those which came to his knowledge and that it was likely that there may be well woven web of lies and deceits in the Prospectus of the Company, which unless investigated cannot be unearthed. The applicant submitted that it is none less than a scam worth hundreds of crores.

(r) Legal Submissions:

A. Suppression of Sale Deed dated 13.03.1985:

WPL got Dainik Bhaskar under Sale Deed dated 13.03.1985. DB Corp got Dainik Bhaskar from WPL through demerger. The sale deed was the nucleus of title of DB Corp over Dainik Bhaskar.

The source and basis of the claim over Dainik Bhaskar for which public money was invited through public issue was required to be disclosed in the Prospectus as per rule 57(2)(a)(ii) read with Part A, Item 1(a) of Schedule VIII of the ICDR Regulations and such sale deed was required to be shown under ‘other information’ in the list of material contract with the Prospectus and produced before SEBI for inspection as per Part A Item XVI(A)(1) & (2) of Schedule VIII of the ICDR Regulations.

B. Suppression of Civil Suit no. 74-A/1987:

The said civil suit was an “outstanding dispute” as it was revived by the Hon’ble Supreme Court as per paras 10, 37 and 40 of the Judgment dated 07.07.2003 and the same was required to be disclosed in the Prospectus as per rule 57(2)(a)(ii) read with Part A Item IV(H)(24) of Schedule VIII of the ICDR Regulations under “Risk Factor” and under “Legal and other information” regarding “Outstanding Litigations and Material Developments” under rule 57(2)(a)(ii) read with Part A Item XA(1)(g) and XA3(A) of Schedule VIII of the ICDR Regulations.

In section II – Risk Factors on page xii para 2, it was 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.”

This was a misleading statement inasmuch as it was none other than WPL which had challenged the ownership of the newspaper Dainik Bhaskar and filed Civil Suit no. 74-A/1987 before the District Court, Bhopal seeking declaration of title over Dainik Bhaskar. It was for this reason that it has not been mentioned anywhere as to who were the person/s who challenged the ownership of the newspaper, Dainik Bhaskar in the past and what were the case number/s.

C. Suppression of the Scheme of Demerger:

The Scheme of Demerger approved by the Gujarat High Court vide Orders dated 10.10.2006 and 22.12.2006 was required to be shown under “Other Information” in the List of material

contract with the Prospectus and produced before SEBI for inspection as per Part A Item XVI(A)(1) & (2) of Schedule VIII of the ICDR Regulations. However, the same was not filed with the Prospectus and without disclosure of the same, the public in general were asked to invest on the basis of such orders. It appeared that for the first time, the Scheme of demerger was brought on record of SEBI along with the additional reply of the Company, which was forwarded to the applicant vide SEBI letter dated 08.01.2015. Therefore, according to the applicant, the same was a subject matter of investigation/enquiry as to how the public issue was allowed without there being any of the documents showing ownership of DB Corp over the newspaper Dainik Bhaskar.

D. Misrepresentation regarding wind farm business:

A perusal of the Order dated 22.12.2006 (of Hon'ble Gujarat High Court) would reveal that the same was confined only to the publication business. The Company made a misrepresentation in the Prospectus by stating that the wind farm business was also transferred vide Order dated 22.12.2006. The applicant submitted that neither the scheme was filed with the Prospectus nor Clause 1.9 was brought to the notice of the public. The definition of "Publishing Business" in clause 1.9.1 of the Scheme shows that the wind farm business of WPL was never transferred to the Company but only assets of the wind farm project as pertaining to the publishing business was transferred. It was apparent that windfarm business of WPL had not been transferred to the Company and it had 'pocketed' public money based on those misrepresentation in Prospectus in violation of Part A Item XVI(A)(1) & (2) of Schedule VIII of the ICDR Regulations.

E. In addition to the suppression/misrepresentation made above, the Company had misrepresented/suppressed material facts in paragraph 18 (sub-para q above) and thereby committed fraud in violation of the following regulations:

1. DIP Guidelines
2. ICDR Regulations
3. PFUTP Regulations

SEBI had in the past, pursuant to the directions of the Hon'ble Delhi High Court directed, vide order dated 20.10.2011 (in the matter of DLF Ltd.), an investigation after hearing both the parties. The applicant requests a similar investigation in relation to the Prospectus of DB Corp.

- F. The aforesaid misrepresentation were material and any reasonably prudent investor would not have invested money in the Company as per Prospectus dated 20.12.2009 if the aforesaid disclosures had been duly made. Huge public money under the public issue was at stake including the money of the applicant who is a shareholder of DB Corp.

Section 62 of the Companies Act makes certain persons liable to pay compensation to every person who subscribes for any shares or debentures on the faith of the Prospectus for any loss or damage he may have suffered by reason of the untrue statement made in the Prospectus. Section 63 incorporates the provision relating to criminal liability for misstatement in Prospectus. It provide that where a Prospectus includes any untrue statement, every person who authorized the issue of Prospectus shall be punishable with imprisonment for a term which may extend to 2 years or with fine which may extend to Rs.50,000/- or with both. It was well settled that a corporate body seeking investments by means of misleading statements which withhold vital facts for intentionally inducing persons to do or omit to do something would be liable to prosecution for cheating and deception and hence non-disclosure of relevant information in Prospectus attracts corporate criminal liability (*Iridium India Telecom Ltd. v. Motorola Inc.*). In *Sahara India Real Estate Corp. Ltd.*, it has been laid down that disclosures are the rule and there is no exception and misleading the public is a serious crime which may attract civil and criminal liability.

- G. The Company had wilfully and intentionally concealed facts which were material and ought to have been disclosed but were intentionally withheld so as to deceive investors including the applicant into advancing and expending money and such investors have been deliberately induced into making huge investments on the basis of the representations made by the Company in its Prospectus dated 20.12.2009, which representation turned out to be completely false and fraudulent. It has been laid down in *Satwant Kaur Sandhu v. New India Assurance Co. Ltd.* that the term “material fact”, when understood in general terms, means any fact which would influence the judgment of a prudent person and refers to any fact which goes to the root of the matter and has a bearing on the risk involved. In this regard, it is settled position of law (*Lachhman Dass v. Jagat Ram*) that facts pertaining to title are material facts, omission of which would result in non-disclosure of relevant information and thereby amount

to suppression of material facts resulting in commission of fraud since it goes to the very root of the matter.

Furthermore, the omission of the fact in the Prospectus that WPL, the predecessors-in-title of DB Corp has lost the title dispute of Dainik Bhaskar in Civil Suit no. 74-A/1987 vide Order dated 27.10.1993 and failure to mention regarding the sale deed dated 13.03.1985 which had ceased to exist after 10 years as a result of which WPL had already lost its title over Dainik Bhaskar much before it was transferred to DB Corp also amounted to suppression of material or vital fact inasmuch as it is well settled in view of the decisions in Ram Dhan v. State of U.P., Ramjas Foundation v. UoI and State of A.P. v. T. Suryachandra Rao that non-disclosure of a pending case or judgment of a court and material document amounts to suppression of material fact and fraud.

It was equally well settled that a Prospectus may be fraudulent even where its statements are true when it attempts to create a false impression by omitting something. To render a Prospectus fraudulent, it is not necessary that there should be a false representation in it. The suppression of material fact is also fraudulent as it is trite that half-truth is no better than a downright falsehood. A Prospectus, which merely specifies something but neither gives notice of the circumstances nor discloses contracts or resolutions which are material to be known and omission of which causes the Prospectus to give a false impression of the position of the company, would be regarded as misleading Prospectus resulting in fraudulent representation. Thus, a Prospectus must be looked from a point of view of “Constitution of a company”. In this regard, a company should never omit material facts which are directly relevant for investing in the company. Omission of such material facts ought to be handled strictly.

- (s) According to the applicant, the Company had made unreliable and fraudulently incorrect disclosures in its Prospectus. The same was with a view to ensure that innocent investors invest in the Company and are thereby entrapped by the deceitful disclosures. During the pendency of the instant application, three promoters of the Company have sold shares worth Rs.159.5 crore. It was apparent that the Company intends to siphon the public money collected through the public issue in question and action is warranted from SEBI in public interest.

- (t) In view of his submissions, the applicant requested that SEBI may pass such orders/directions as may be in the interest of justice and keeping in view the difficulties and financial loss that would be caused to the innocent investors including the applicant. The applicant requested that the present application be allowed and investigation be carried out expeditiously against the Company.

10. On April 08, 2015, the Company filed its Rejoinder through its Company Secretary, Ms. Anita Gokhale. Copy of the same was furnished to the Advocate for the applicant. The parties agreed that further submissions, if any of the applicant be filed on April 28, 2015 and thereafter the personal hearing be held on May 05, 2015. The following were the submissions made by the Company in its Rejoinder:

- (a) With respect to the allegation of transfer of windfarm business to the Company, it was submitted that the Order dated 22.12.2006 passed by the Hon'ble High Court of Gujarat, approving the merger, itself recorded that the windfarm business of WPL stood transferred to the Company. Therefore, the allegation of misrepresentation regarding such transfer was unfounded and baseless.
- (b) With respect to the allegation that WPL had lost the title disputes of Dainik Bhaskar in Civil Suit no. 74-A/1987 vide order dated 27.10.1993, it was submitted that on the date of submission of Prospectus, there was no dispute pending regarding Dainik Bhaskar. The fact that suit no. 74-A/1987 was dismissed vide Order dated 27.10.1993 is of no consequence as the order was not on merits but was an order of dismissal on account of withdrawal of proceeding. The Company also submitted that vide letter dated 18.06.2004 of RNI (*issued pursuant to the directions of the Hon'ble Supreme Court vide order dated 07.07.2003*), WPL was recorded as owner of title Dainik Bhaskar from Bhopal as well as for various other editions mentioned therein. Copy of letters dated 18.06.2004 issued by RNI in respect of owner of title 'Dainik Bhaskar' for the –pre-1993 editions and post 1993 were annexed.

According to the Company, the RNI letters were in existence and in force on the date of submission of Prospectus by the Company and continue to be in force even today. There was no dispute pending in respect of title 'Dainik Bhaskar' on the date of submission of Prospectus.

- (c) With respect to the allegation that the sale deed 13.03.1985 was no more in existence and WPL had lost its title over Dainik Bhaskar much before it transferred to the Company, it was submitted that the applicant himself had instituted a civil suit in the year 2013 before the District Judge, Bhopal *inter alia* seeking a declaration that ownership of title of 'Dainik Bhaskar' vests in a partnership firm known as M/s. D. P. Agrawal and brothers in which the applicant has become one of the partners by way of an alleged assignment deed dated 24.02.2010. In the said suit, the applicant pleaded about the alleged sale deed of 13.03.1985 by way of which ownership of title 'Dainik Bhaskar' was allegedly conveyed to WPL and it was further pleaded by the applicant that the said sale deed was invalid and void. The Company submitted that the aforesaid civil suit "*is still pending before competent forum and there was no suit pending before the date of submission of Prospectus*".

The issue raised by the applicant is one of the pleas of the applicant in the said civil suit. The legality and validity of the said plea was yet to be adjudicated by the competent forum. The applicant by way of the instant complaint is trying to invite a premature finding/observation of SEBI in anticipation that the applicant would be able to use the same to his aid and assistance in the pending suit at Bhopal. According to the Company, the applicant was indulging into speculative practices by inviting SEBI to give its finding on issues which are already *sub-judice* which is against settled principles of law.

According to the Company, it is pertinent to note that the letter dated 18.06.2004 issued by the RNI was preceded by the Judgment dated 07.07.2003 of the Hon'ble Supreme Court and the Judgment dated 08.12.2003 of the Hon'ble Gwalior High Court passed in W.P. No.9150/2003 wherein the Hon'ble High Court had directed RNI to amend its records by restoring the entries regarding ownership of title "Dainik Bhaskar" as it prevailed immediately prior to 26.06.1992. The Company submitted that in the light of the letter dated 18.06.2004 issued by RNI, there was no suppression of any material committed by the Company in submitting the Prospectus on 20.12.2009.

The Company further stated that after submission of Prospectus and more particularly from 2010 onwards, several attempts were made by rival members of the Agarwal family seeking judicial orders setting aside letter dated 18.06.2004 issued by RNI. Mr. Mahesh Prasad Agarwal had instituted a writ petition assailing the validity of the said letter, which was turned down by the

Hon'ble Delhi High Court *inter alia* holding that if any party is aggrieved by the said letter issued by the RNI should seek recourse before the Hon'ble Supreme Court by way of contempt proceedings.

The Order of the Hon'ble Delhi High Court was further challenged before the Hon'ble Supreme Court by way of SLP No. 1935-19396/2011/2012 which was also dismissed vide Order dated 02.01.2012.

In the meanwhile, other rival members, Smt. Kishori Devi Agarwal and Smt. Hemlata Agarwal also filed a civil suit before the Hon'ble Delhi High Court *inter alia* seeking a declaration that the ownership of the title 'Dainik Bhaskar' vests in firm M/s. D P Agarwal and Bros. in which both the petitioners claim to be partner. Copy of the plaint was annexed.

The Company also submitted that Mr. Mahesh Prasad Agrawal instituted another civil suit before the District Court, Jhansi *inter alia* seeking a declaration that the ownership of the title 'Dainik Bhaskar' vests in the firm M/s. D P Agarwal and Bros. and him being a 30% partner in the firm, is entitled to recover 30% of the total revenue generated by the Company from advertisements published in the newspaper Dainik Bhaskar.

The Company stated that it was relevant to mention that as 3 different civil suits relating to common subject matter were instituted by 3 different parties against the Company in 3 different courts, the Company had preferred a Transfer petition before the Hon'ble Supreme Court for consolidating all the 3 suits at one place. These transfer petitions are pending before the Hon'ble Supreme Court wherein the applicant has already appearance.

According to the Company, the issue raised in the instant complaint regarding issues at sub-paragraphs (b) and (c) above are already sub-judice before the Hon'ble High Court (in Civil Suit no. 1663/2011 – Kishori Devi Agarwal v. Ramesh Agarwal and others), the Hon'ble District Court, Bhopal (194/2013 – Suresh N. Vijay v. DB Corp and another), the District Court, Jhansi (C.S. No. 646/2013 – Mahesh Prasad Agarwal v. Bhaskar Publication and others) and the Hon'ble Supreme Court (Transfer petition no. 1131/2013 – DB Corp v. Suresh N. Vijay and others and Transfer petition no. 717/2013 – Ramesh Agarwal v. Suresh N. Vijay). The Company also

submitted that judicial propriety warranted that issues raised in points (b) and (c) should be best left untouched to be adjudicated by the competent forums, where they are pending.

The Company has also submitted that in C.R. no. 38/2013, the Hon'ble Gwalior High Court vide judgment dated 06.05.2013 held 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 was issued as a consequence and was a direct fallout of the judgment dated 07.07.2003 passed by the Hon'ble Supreme Court.

The Company contended that issues raised in points (b) and (c) impliedly involved adjudication regarding validity and legality of letter dated 18.06.2004 issued by the RNI or any finding given on the issues raised will necessarily have its effect on the said letter and therefore such adjudicatory exercise should not be ventured into.

The Company further contended that controversy raised in points (b) and (c) were not in existence at the time of submission of Prospectus and has been raised only after issuance of Prospectus by the applicant in the Civil Suit mentioned above. Therefore, the Company did not have any occasion to commit any suppression or misrepresentation in respect of issues mentioned in points (b) and (c) at the time of submission of Prospectus.

(d) **Company's submissions with respect to additional points urged in the Written Submissions dated 26.03.2015:**

1. In response to paragraph 17(a) of the Written Submissions dated 26.03.2015 of the applicant, the Company submitted that clause 1.9.1 of the Scheme of Demerger was self-explanatory without any requirement for interpretation. A plain reading of the said clause has only one meaning and that was the publication business included windfarm project of the demerged company. Anything contrary thereto or inconsistent therewith was false and denied.
2. In response to paragraph 17(b) of the Written Submissions of the applicant, the Company submitted that Civil Suit no.74-A/1987 stood disposed off from the dockets way back in the year 1993 and the said suit still maintains the same status in the court's records. It was wrong to say that the suit revived and the Company did not take any steps. As far as the ownership

of title “Dainik Bhaskar” was concerned, the Company had already given the fullest possible disclosure with respect to the risks attached with its ownership of the said title, although with the RNI letter dated 18.06.2004 there remains no dispute regarding vesting of ownership of the title ‘Dainik Baskar’ with the Company.

The Company rejected the allegation regarding ‘pocketing’ public money worth hundreds of crore as false. Further, in view of the disclosure of risk by the Company in RHP, the allegations and contentions of the applicant became baseless and frivolous.

3. In response to paragraph 17(c), the Company submitted that the order dated 18.12.2003 is still in force and its effect could not be diluted and action taken pursuant to the aforesaid order has the effect of law and the same cannot be ignored merely because some appeal against the aforesaid order has been preferred by the applicant.
4. In response to paragraph 17(d), the Company submitted that the letter dated 18.06.2004 issued by the RNI itself records that the said letter was issued in terms of the Judgment dated 07.07.2003 of the Hon’ble Supreme Court and the Hon’ble Gwalior High Court vide Order dated 08.12.2003 had clarified the purport and intent of the Order dated 07.07.2003. According to the Company, the contention that the RNI letter dated 18.06.2004 was not in pursuance of the Hon’ble Supreme Court was false and disproved by the record. The letter of RNI reaffirms and reinforces the vesting of ownership of the title of Dainik Bhaskar with the Company.

The Company submitted that the contention of the applicant that the Company is required to establish its title was completely misconceived inasmuch as SEBI is not the forum for establishing or for disproving ownership rights. The applicant had himself instituted a suit before the District Court, Bhopal against the Company and hence all objections and contentions vis-à-vis the title are to be raised by the applicant before the District Court, Bhopal and not before SEBI.

5. In response to paragraph 17(e), the Company submitted that the facts stated by the applicant in this paragraph were false and hence denied. The same contentions have been urged by the applicant in the civil suit instituted by him before the District Court, Bhopal, which were yet

to be established by the applicant. The Company further submitted that by reiterating and repeating the said contentions before SEBI regarding validity of sale deed dated 13.03.1985, alleged pendency of civil suit 74-A/1987 etc, would not absolve the applicant from establishing its contentions with cogent material and proof before the District Court, Bhopal. According to the Company, raising such contentions before SEBI is irrelevant and immaterial and in view of the disclosure of risk made by the Company in the RHP, the allegations and contentions of the applicant become baseless and frivolous.

6. In response to paragraph 17(f), the Company submitted that the facts stated by the applicant in this paragraph were false. The Company denied that legal fetters applicable to Mahesh Prasad Agarwal were not binding on the applicant. By virtue of the assignment deed dated 24.02.2010, the applicant was assigned all rights that Mahesh Prasad Agarwal allegedly enjoyed in respect of the ownership of title 'Dainik Bhaskar' and in respect of share in the alleged partnership firm DB Agarwal & Bros. According to the Company, the applicant is at best entitled to only those rights subject to all legal fetters that were applicable, as were allegedly enjoyed by Mahesh Prasad Agarwal and nothing more. The Company submitted that all the contentions made by the applicant in the said paragraph were to bolster the assertion that the Company is not the owner of title 'Dainik Bhaskar' and reiterated that the applicant had already preferred a civil suit and the same is awaiting adjudication before the competent court in Bhopal.
7. In response to paragraph 17(g), the Company submitted "*the facts stated in this para are matters of record and as such need no reply, however, it is denied that the applicant has used the aforementioned assignment deed to its benefit in any manner or form*". The Company also submitted that the applicant's admission in the said paragraph that civil suits relating to title disputes are pending adjudication before the District Court, Bhopal itself indicated that all disputes relating to title have been raised in the said 3 civil suits all of which were filed by the applicant or his affiliates post the date of the public issue. Therefore, the same belies the stand of the applicant that on the date of the public issue there was suppression of material facts by the Company.
8. In response to paragraph 17(h), the Company denied the contentions raised by the applicant in the said paragraph and reiterated that issues which are sub-judice before the competent forum by way of civil suits cannot be adjudicated in this proceeding.

9. In response to paragraph 17(i) – (k), the Company submitted that the facts stated therein were false and hence denied the same. The judgment dated 06.05.2013 speaks for itself and is a judgment in rem, which is required to be observed by all civil authorities and courts subordinate to the High Court. The Company denied that public money had been pocketed by it and denied that interest of investors is being prejudiced in any manner by it. The Company also stated that no prejudice has been caused to the investments of the applicant in any manner or form. According to the Company, the applicant is not a bonafide investor and is misusing the instant proceeding in anticipation of procuring a favourable finding so as to strengthen his case in the civil suits which are pending before the District Court, Bhopal. However, in view of the disclosure of risk issued by the Company in the RHP, the allegations and contentions of the applicant became baseless and frivolous.
10. In response to paragraph 18, the Company has stated that the facts were false and denied the same. The Company also submitted –
- (i) Suit No. 74-A/1987 was not pending on the date of the issue of RHP. The self-serving interpretation of the applicant that in the said civil suit the Company lost ownership of the title 'Dainik Bhaskar' is merely an allegation of the applicant on the basis of which he has already preferred a civil suit praying for a declaration to that effect and the same is pending adjudication. In the said proceeding, the Company is also a party-defendant opposing the applicant. Until the said civil suit is decided, it would be speculative to make any predictions or to decide the fate of the present proceedings merely on the basis of allegations of the applicant.
 - (ii) The Company denied that there was any fraud played on the investors in respect of calculation of issue price. No complaint was made in this regard by any other investor except the present applicant which would show falsity of the complaint.
 - (iii) The Company also denied the allegation that its promoters were in collusion with M/s. Ajmera and Associates, C.A.
 - (iv) The Company also submitted that the allegation regarding the wrong mentioning of date was also false and denied the same.

- (v) The Company denied the allegations made regarding the misstatement about the directions of the Hon'ble Supreme Court. According to the Company, the said judgment was the best proof of what is contained and when the same was read with the order dated 08.12.2003 of the Hon'ble Gwalior High Court, it was evident that there was no misstatement made by the Company.
- (vi) The Company also denied the allegation regarding the statement under the head "History of our Company". According to it, there was no misstatement of any nature which constituted committing fraud on the investors. The Company denied that the letter dated 18.06.2004 issued by the RNI was based on a misrepresentation. Mahesh Prasad Agarwal had sought to assail the validity of the said letter but failed all the way to the Hon'ble Supreme Court. The Company contended that the RNI's letter cannot be now assailed indirectly in this proceeding by the applicant.
- (vii) The Company denied any wrong committed by the RNI in complying with the directions of the Hon'ble Supreme Court in its judgment dated 07.07.2003. The action of RNI in issuing letter dated 18.06.2004 was also an outcome of direction of the Gwalior High Court dated 08.12.2003. According to the Company, if the applicant had any grievance against the RNI, the same cannot be ventilated in this proceeding.
- (viii) The Company submitted that the allegation regarding the facts mentioned at paragraphs 118 and 119 of the Prospectus is false and hence denied. The Company contended that the applicant is seeking to controvert the Prospectus merely on the basis of his self-serving interpretation of the Judgment of the Hon'ble Supreme Court and other Orders of the High Court. According to the Company, the RHP cannot be doubted or dis-credited on such fanciful imagination of the applicant.

11. In response to paragraph 19, the Company submitted that there was no suppression or misrepresentation committed by it and that the applicant was misleading SEBI into deciding and giving finding on facts which have been disputed by the applicant in civil suits which are pending adjudication before the competent forum.

12. In response to paragraph 20A, the Company submitted that facts stated therein are false and hence denied. The Company further submitted that there was no material suppression and all material facts had been disclosed and fullest possible disclosures of risk had been made in the Prospectus.

The Company reiterated that Civil Suit no. 74-A/1987 stood disposed off long ago and has no relevance for the purposes of RHP. By stating that ownership of title 'Dainik Bhaskar' has been challenged in the past was a reference to the Judgment dated 07.07.2003 of the Hon'ble Supreme Court.

With respect to the Scheme of demerger, the Company submitted that the facts stated therein are false and denied the same. The Company submitted that it acted in full compliance and due adherence of the rules and regulations of SEBI.

13. In response to paragraphs 20B and 20C, the Company contended that it did not commit any fraud or misrepresentation on the investors and there was no violation of any rules or regulations of SEBI and therefore no case to initiate investigation against the Company.

14. As regards paragraph 20D, the Company submitted *"The facts stated in this para are false and hence denied. The citation referred in this para is misplaced as the same is distinguishable on facts. There is no reason to find any suppression of material facts by the undersigned. The undersigned has made the best possible disclosure which no prudent and bonafide investor would find to be inadequate. Since the applicant herein is driven by ulterior motives against the undersigned, therefore, he is trying to establish by hook or by crook that the undersigned committed misrepresentation and fraud. Notably, the applicant is already litigating with the undersigned before the civil court in Bhopal which is the main cause for the applicant to initiate the instant proceedings against the undersigned. Strangely, the applicant had no grievance against the undersigned uptill 2013 it is only after the applicant instituted a suit against the undersigned he started finding faults in the IPO of the undersigned. The delay in lodging complaint with the SEBI by the applicant itself indicates that the complainant is not bonafide and is made with bad faith"*.

- (e) In view of its submissions, facts and circumstances, the Company requested that the complaint be dismissed with exemplary cost for being moved with bad faith to harass it by misusing the legal procedure.

11. In the personal hearing held on May 05, 2015, the applicant was represented by Mr. Amalpushp Shroti, Advocate and the Company was represented by Mr. Ankur Mody, Advocate. The applicant's Advocate filed Written Submissions and made oral submissions. The submissions made in this additional Written Submissions were the following:

- (a) From the Written Submissions of the applicant dated 26.03.2015 and the rejoinder of the Company dated 08.04.2015, the following contentions and submissions of the applicant made in his above said written submissions were not denied or rebutted:

- (i) The sale deed dated 13.03.1985 is the nucleus of the title of DB Corp, which was not disclosed in the Prospectus.
- (ii) The pendency of Civil Suit no.74-A/1987 even prior to and on the date of issue of IPO dated 20.12.2009 revived by the Hon'ble Supreme Court in Judgment dated 07.07.2003 was not disclosed.
- (iii) The issue relating to the title of the Hindi newspaper called 'Dainik Bhaskar' was decided by the Hon'ble Supreme Court vide its judgment dated 07.07.2003 in respect of Bhopal, Indore and Jabalpur and judgment reported in (2003) 6 SCC 220 for Gwalior. The effect and consequences of these judgments have also not been disputed.
- (iv) Letter dated 18.06.2004 issued by RNI is not a document of title of Dainik Bhaskar.
The applicant relied on judgments cited in AIR 1962 SC 586 (para 9) and AIR 1989 Madhya Pradesh 152 (paras 12 and 22).
- (v) DB Corp claimed a purported right over 'Dainik Bhaskar' which was neither possessed nor claimed for by its predecessor-WPL which was incorporated firstly as a private limited company in the year 1981, then converted into a limited company in 1987 and again converted as a private limited company in 2009.

- (vi) Under the Scheme of arrangement for demerger of WPL to DB Corp, only the publishing business of WPL was demerged and wind-farm business was not transferred. Even the WPL demerger process was initiated in Gujarat to circumvent the jurisdiction of the M.P. High Court and conceal material facts from the public.
 - (vii) The Scheme of arrangement of WPL demerger provides that the ownership of all land and buildings shall continue to be in the name of WPL with DB Corp having the right to use the immovable property by way of lease or leave and license.
 - (viii) The Company pocketed the public money to the extent of crore of rupees without any title in the name of 'Dainik Bhaskar'.
 - (ix) Pendency of C.S. no.194-A/2013 filed by the applicant in the District Court, Bhopal has no bearing on the adjudication of the controversy involved in the application dated 15.05.2013 of the applicant.
 - (x) Three promoters of DB Corp have sold their shares worth Rs.159.5 crore with the intention to siphon the public money collected through the public issue and as such emergent action is warranted restraining the promoters from sale or transfer of the shares of the Company.
 - (xi) There is a strong case that no material change as to its legal rights and liabilities/assets be permitted and be frozen.
- (b) The applicant made submissions regarding the importance of prospectus and the observations made by the Hon'ble Supreme Court of India in Sahara India Real Estate Corp. Ltd. vs. SEBI *[(2013) 1 SCC 1 at page 63]* with respect to Prospectus.
- (c) The applicant also made submissions with respect to the role of a merchant banker in the IPO process and submitted that the merchant banker is a specialized intermediary who is required to do due diligence and ensure that all the requirements of law are complied with while submitting the draft offer document to SEBI. The applicant submitted that any non-compliance on the part

of a merchant banker would attract penal action from SEBI in terms of SEBI (Merchant Bankers) Regulations and that not only the Company but also the MB would be responsible for any suppression/misrepresentation-in-question. The applicant referred to the observations made by Hon'ble SAT in its Order dated 10.04.2003 (Imperial Corporate Finance & Services Pvt. Ltd.).

- (d) The applicant submitted that the provisions of the Companies Act, 2013 has expanded the scope of “officer in default” to include merchant bankers as is evident from the provision of section 2(6) which defines “officer in default”. According to the applicant, the liability and responsibility of the merchant bankers in the matter of issue or transfer of shares of a company is clearly specified in the Act. However, as regards civil and criminal liability for misstatements in Prospectus, it is the company and every person who is a director or promoter of the company and every person who is a director or promoter of the company or has authorized the issue of the Prospectus or is an expert referred to in section 26(5) of the Act who would be held liable.

However, the provisions of sections 34 and 35 dealing with criminal and civil liability for misstatements in Prospectus nowhere specify the ‘officer in default’ to be liable for misstatements or misrepresentation in Prospectus although the liability of the ‘officer in default’ is specified in sections 39, 40, 46, 48, 53 and 56 of the Act for failure to comply with the provisions relating to those sections dealing with issue, allotment and transfer of securities.

The applicant also submitted that the lead manager/BRLM is the manager to the issue, who is responsible for furnishing ‘Due Diligence Certificate’ to SEBI in accordance with SEBI (Merchant Bankers) Regulations, 1992 (“MB Regulations”) and has overall responsibility for the pre-issue and post issue management obligations of public issues and his liability would arise only if the merchant banker/lead manager has not taken maximum care and caution while lead managing the issue and failed to act quickly, promptly and reasonably in seeking the details and in fulfilling the criteria of proper care and due diligence, as prescribed under the MB Regulations, to the fullest possible extent. According to the applicant, merchant banker of the DB Corp IPO is a necessary party and their explanation should also be called during investigation into the alleged suppression/misrepresentation.

- (e) The applicant submitted that the Companies (Amendment) Act, 2000 has added clause (iii) to section 209-A(1) of the Companies Act, 1956 under which SEBI has also been given the power

of inspection of listed companies or companies intending to get listed, through such officers, as may be authorized. Apart from the same, ample powers are vested in SEBI under section 15HA read with section 15J of the SEBI Act.

(f) The applicant also submitted that section 24 of the Companies Act, 2013 empowers the SEBI to regulate matters relating to issue and transfer of securities and non-payment of dividend by listed companies or those companies which intend to get their securities listed. The applicant also submitted that in case of non-observance of ICDR Regulations/DIP guidelines, SEBI may –

- Direct the persons concerned to refund any money collected under an issue to the investors with or without requisite interest, as the case may be;
- Direct the persons concerned not to access the capital market for a particular period;
- Direct the stock exchange concerned not to list or permit trading in the securities;
- Direct the stock exchange concerned to forfeit the security deposit, deposited by the issuer;
- Any other directions which the Board may deem fit and proper in the circumstances of the case.

(g) The applicant cited the following cases with respect to role of SEBI in case of misrepresentation in Prospectus:

1. *SEBI vs. Ajay Agarwal* – AIR 2010 SC 3466
2. *Kimsuk Krishna Sinha vs. SEBI* – (2010) 169 DLT 197 (Del)
3. *Sahara India Real Estate Corp. Ltd. vs. SEBI* - (2013) 1 SCC 1
4. *SRM Energy Ltd. vs. SEBI and another* - Appeal no. 77 of 2012 decided on 18.05.2012
5. *Shankar Sharma vs. SEBI* – [(2001) 33 SCL 747 – order dated 19.09.2001
6. *SEBI vs. Shonkh Technologies* (Order dated 16.10.2007)

A copy of the above said Written Submissions was furnished to the Advocate for the Company. The matter was posted for further hearing on June 12, 2015.

12. In the personal hearing held June 12, 2015, the Complainant (Suresh N. Vijay) was represented by Mr. Amalpushp Shrotri, Advocate and Mr. M. D. Nair and the Company (DB Corp Ltd.) was represented by Mr. Ankur Mody, Advocate and Mr. Ashok Sodhani (Senior AVP -Finance). The following was the record of proceedings of the personal hearing:

1. “.....
2. *The learned Advocate for the Company made oral submissions on the lines of the Company's written submissions. The Advocate furnished a copy of the Judgment dated June 22, 2012 of the Hon'ble High Court of Gujarat [in Misc. Civil Application No. 172/2011 in Company Petition No. 126/2006 in Company Application No. 267/2006 - Dwarka Prasad Agarwal & Brothers vs. Writers and Publishers Limited]. A copy of the said judgment was furnished to the Advocate for the Complainant.*
3. *As the above said judgment was produced for the first time in today's hearing, the Company/its counsel was advised to file their written submissions with respect to the said judgment within a period of 7 days from today and also forward a copy of such submissions to the complainant/his counsel. On receipt of such submissions, the Complainant/his counsel may file their rejoinder within a period of 7 days thereafter.*
4. *Personal Hearing in the matter is concluded’.*

13. Thereafter, the Company vide letter dated June 12, 2015 stated that it had relied upon the Judgment dated 22.06.2012 passed by the Hon’ble High Court of Gujarat in MCA No.172/2011 (*Dwarka Prasad Agarwal & Brothers – through partners vs. Writers and Publishers Limited and another*) and requested that the said Judgment be formally taken on record. A copy of the said judgment was also enclosed.

14. In response (vide letter dated June 25, 2015 received on July 01, 2015), the Advocate for the applicant stated that –

- (a) The Company has requested that the Order dated June 22, 2012 be taken on record without making any submissions as to how the same is relevant for determination of the instant application.
- (b) There was nothing in the Order dated June 22, 2012 regarding suppression/misrepresentation by the Company which was the issue in the instant application.
- (c) Even otherwise, the case was dismissed by the Hon’ble Gujarat High Court mainly on the ground that the application was barred by limitation and there was an injunction/restraint order against Smt. Kishori Devi for acting on behalf of the firm and/or acting as its partner.
- (d) It was relevant to note that neither the applicant was a party nor was the assignment deed brought to the notice of the Hon’ble Gujarat High Court. For these reasons, the same does not have any bearing on the instant application.

15. I have considered the application, the submissions made by the parties, the documents submitted by them, the oral submissions made during the personal hearings and other material available on record.

The Hon'ble SAT has remanded the matter to SEBI and directed to furnish copies of the reply/documents furnished by the Company to the applicant and also to serve copy of rejoinder of applicant to the Company, hear them and pass appropriate order on merits as expeditiously as possible. As mentioned above in this decision, SEBI had furnished the additional reply (undated) of the Company to the applicant. Both the parties were afforded opportunity to make their submissions and for making rejoinder submissions on each other's contentions. The parties were also afforded opportunities of personal hearing on the dates mentioned above.

16. The majority of the allegations levelled by the applicant centre around the sale deed dated 13.03.1985, the civil suit no. 74A/1987, the RNI's letter dated 18.06.2004 and the Hon'ble Supreme Court's judgment dated 07.07.2003. I note that the parties (Suresh N. Vijay/his assignors, the Company and its promoter Ramesh Agarwal) have filed various civil suits with respect to the title of Dainik Bhaskar and the sale deed. Therefore, it can be inferred that the title to Dainik Bhaskar is disputed and parties claim ownership on the same.

17. On consideration of the allegations levelled by the applicant and the submissions made by the Company, the exercise would be to find whether the Company committed any misrepresentation or suppressed or concealed any material issue or fact as mandated under the ICDR Regulations. I hereby record my observations herein below on such issues.

(a) Allegation of suppression of Sale Deed dated 13.03.1985:

- (i) According to the applicant, WPL obtained the right over "Dainik Bhaskar" through the sale deed dated 13.03.1985 and that DB Corp obtained right to publish the said newspaper through the Scheme of Demerger from WPL. The applicant also said that the source and basis of the claim over 'Dainik Bhaskar' for which public money was mobilized was required to be disclosed in the Prospectus in terms of regulation 57(2)(a)(ii) read with Part A, Item 1(a) of Schedule VIII of the ICDR Regulations and such sale deed was required to be shown under "other information" in the list of material contract and produced before SEBI for inspection as per Part A Item XVI(A)(1) & (2) of Schedule VIII of the ICDR Regulations.

- (ii) The Company contended that there was no material suppression and all material facts had been disclosed and fullest possible disclosures of risk had been made in the Prospectus.
- (iii) I note that regulation 57(1) of the ICDR Regulations stipulates that the offer document shall contain all material disclosures which are true and adequate so as to enable the applicants to take an informed decision. Further, without prejudice to the generality of sub-regulation (1), the RHP/Shelf Prospectus/Prospectus should *inter alia* contain disclosures specified in Part A of Schedule VIII subject to the provisions of Parts B, and C thereof.

Item (1)(a) of Part A of Schedule VIII stipulates that only relevant and updated information and statistics shall be disclosed and also that the source and basis of all statements or claims made shall be disclosed.

- (iv) I also note that Part A Item XVI(A)(1) & (2) of Schedule VIII of the ICDR Regulations states -

“(XVI) Other Information:

(A)List of material contracts and inspection of documents for inspection:

(1) Material contracts.

(2) Documents.

(3) Time and place at which the contracts, together with documents, will be available for inspection from the date of offer document until the date of closing of the subscription list.

.....”

- (v) The Company in its Prospectus, at page 117, has *inter alia* stated the following:

"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:

<i>Place of publication</i>	<i>Name of the owner</i>
<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>

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:

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

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 'Divya 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.*

....."

- (vi) The Company, in its Prospectus at page 506, has *inter alia* placed the following documents for inspection:

“.....

30. *Hon'ble Supreme Court judgment 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*
31. *RNI letter No 5/4/1996-Admn dated June 18, 2004.*
32. *Letter dated July 14, 2003 from RNI to District Magistrate, Bhopal*
33. *Letter dated July 14, 2003 from RNI to District Magistrate, Indore*
34. *Letter dated July 14, 2003 from RNI to District Magistrate, Jabalpur*
35. *Letter dated July 14, 2003 from RNI to District Magistrate, Jhansi*
36. *Letter dated July 15, 2003 from RNI to District Magistrate, Gwalior*
37. *Letter dated November 4, 2003 from RNI to District Magistrate, Bhopal / Jabalpur / Indore / Gwalior / Jhansi*
38. *Letter dated September 30, 2003 from RNI to The Publisher, Dainik Bhaskar, Bhopal*
39. *Letter dated September 30, 2003 from RNI to The Publisher, Dainik Bhaskar, Gwalior*
40. *Letter dated September 30, 2003 from RNI to The Publisher, Dainik Bhaskar, Indore*
41. *Letter dated September 30, 2003 from RNI to The Publisher, Dainik Bhaskar, Jabalpur*
42. *Letter dated September 30, 2003 from RNI to The Publisher, Dainik Bhaskar, Jhansi*
43. *Letter dated November 25, 2003 from RNI to District Magistrate, Bhopal / Jabalpur / Indore / Gwalior / Jhansi*
44. *Letter dated June 18, 2004 from RNI to District Magistrate, Gwalior / Indore / Jhansi / Jabalpur / Bhopal*
45. *Memorandum of understanding dated November 15, 2006 between WPL, late Mr. Bishambhar Dayal Agarwal through his legal heirs and Bhaskar Prakashan Private Limited.*

46. *Memorandum of understanding dated June 12, 2008 between our Company, Late Mr. Bishambhar Dayal Agarwal through his legal heirs and Bhaskar Prakashan Private Limited.*
.....”

(vii) I also note that at page F13 of the Prospectus, the Company had stated the following;

“D B CORP LIMITED

Annexure V – Notes to Restated Stand alone Summary Statements

1. (I) *Scheme of Arrangement:*

a. Pursuant to the Scheme of Arrangement (“the Scheme”) approved by Honbl’e Gujarat High court, under section 391 to 394 read with sections 100 to 103 and other applicable provisions of the Companies Act, 1956, the Company has taken over the publishing and wind energy businesses of Writers and Publishers Limited (demerged entity), with effect from April 1, 2005, being the Appointed Date. All the assets and liabilities related to above-mentioned businesses of de-merged entity except land and buildings were transferred to the Company at their respective book values.
.....”

(viii) From the statements made in the Prospectus, as mentioned above, and the documents mentioned therein for inspection, the Company has represented as to how it had received the rights to the publishing business of WPL including the newspaper ‘Dainik Bhaskar’. These documents, were according to the Company, the source and basis of its statements regarding its right to publish Dainik Bhaskar.

(ix) The sale deed dated 13.03.1985 is not a document from where the Company directly derived title with respect to Dainik Bhaskar. As the Company had stated that it derived its right for publishing business including Dainik Bhaskar, through such Scheme of Demerger (as approved by the Hon’ble Gujarat High Court) and the RNI letters, it would be difficult to hold that the Company suppressed the Sale Deed dated 13.03.1985 through which the publishing rights of Dainik Bhaskar were transferred to WPL. DB Corp is not a party to such sale deed. The IPO is of DB Corp and not of WPL. It is admitted by the parties that the applicant (and his assignors), the Company and its promoter Ramesh Chandra Agarwal are litigating suits filed to decide the ownership of Dainik Bhaskar.

- (x) I also find it necessary to discuss about the letter dated 18.06.2004 of the RNI sent to the District Magistrates of Gwalior, Indore, Jhansi, Jabalpur and Bhopal. This letter has been mentioned in the Prospectus and has also been offered for inspection as per the Prospectus. 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.

- (xi) 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. It is important to 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. 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.
- (xii) The applicant being the assignee of Mr. Mahesh Prasad Agarwal and other assignors would be aware of these proceedings and orders of the Hon'ble Courts. 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, the letter dated 18.06.2004 of the RNI which was issued pursuant to the Hon'ble Supreme Court's Order and the Order of the Hon'ble Gujarat High Court (sanctioning the demerger) have been mentioned in the Prospectus.
- (xiii) I also note that the Company has submitted that the issues pertaining to the said sale deed and Civil Suit no. 74-A/1987 are sub-judice before the Hon'ble High Court (in Civil Suit no. 1663/2011 – Kishori Devi Agarwal v. Ramesh Agarwal and others), the Hon'ble District Court, Bhopal (194/2013 – Suresh N. Vijay v. DB Corp and another), the District Court, Jhansi (C.S. No. 646/2013 – Mahesh Prasad Agarwal v. Bhaskar Publication and others) and the Hon'ble Supreme Court (Transfer petition no. 1131/2013 – DB Corp v. Suresh N. Vijay and others and Transfer petition no. 717/2013 – Ramesh Agarwal v.

Suresh N. Vijay). The Company has also stated that judicial propriety warrants that such issues should be left untouched to be adjudicated by the competent forums, where they are pending.

- (xiv) In view of the above reasons, the charge with respect to alleged suppression of sale deed dated 13.03.1985 is disposed of.

(b) Allegation with respect to suppression of Civil Suit no. 74-A/1987:

- (i) According to the applicant the above said civil suit was an “outstanding dispute” as it was revived by the Hon’ble Supreme Court’s judgment dated 07.07.2003 and the same was required to be disclosed in the Prospectus as per regulation 57(2)(a)(ii) read with Part A, Item IV(H)(24) of Schedule VIII of the ICDR Regulations under “Risk Factor” and under “Legal and other information/Outstanding Litigation and Material Developments” under 57(2)(a)(ii) read with Part A Item XA(1)(g) and XA3(A) of Schedule VIII of the ICDR Regulations.
- (ii) The above provisions deal with disclosure of outstanding litigations pertaining to the Company and promoters under the head “Risk Factor” and “Outstanding Litigation and Material Developments” in the Prospectus. Therefore, the question which needs to be decided first is whether the said civil suit was outstanding as on the date of the Prospectus dated 20.12.2009.
- (iii) According to the Company, Civil Suit no. 74-A/1987 stood disposed off from the dockets of the civil court way back in the year 1993 and remains so. The Company also contended that it was wrong to say that the suit revived and the Company did not take any steps. 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.

- (iv) I also note from the records submitted by the applicant that he had filed an application before the District Court, Bhopal *inter alia* for restoring the Civil Suit no. 74A/1987 and to proceed further after impleading him as a party. This application was dismissed as the plaintiff (WPL), who was the *dominus litus* to the suit, had not moved any application for further proceeding of his case. The said order of the Hon'ble Civil Court also records that Civil Suit no. 74A/1987 was dismissed on 27.10.1993 as withdrawn. Therefore, the inference that arises from such order is that the civil suit was dismissed on 27.10.1993 and that it was not re-opened by the plaintiff till date. Therefore, it cannot be said that the suit was "outstanding" as on 20.12.2009 when the Company filed its Prospectus.
- (v) The applicant has argued that WPL has not established his right in the Civil Suit then how it could claim ownership over Dainik Bhaskar and pass on such right to DB Corp. In this regard, I note that it is an admitted position that parties are litigating over such right on Dainik Bhaskar. These suits have been filed before the Civil Courts and therefore it would not be proper to make any further observations which is not the scope of this proceeding.
- (vi) I also note that the Company, in its Prospectus, in unambiguous 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*". Such disclosures/statements were made under the head "Risk Factors" in the Company's Prospectus.
- (vii) In view of the above discussions, I am of the considered view that the allegation with respect suppression of Civil Suit no. 74A/1987 would not be sustainable.

(c) Alleged suppression of the Scheme:

- (i) The applicant has alleged that the Scheme of Demerger approved by the Hon'ble Gujarat High Court vide Order dated 10.10.2005 and 22.12.2006 was required to be shown under "Other Information" in the list of material contract with Prospectus and produced for inspection as per Part A Item XVI(A)(1) and (2) of Schedule VIII of the ICDR Regulations. According to the applicant, the same was not filed with the Prospectus and without disclosing the same to the public, the Company had solicited subscription in its IPO. The applicant also stated that the Scheme was brought on record of SEBI alongwith the additional reply and requested that there should an investigation/enquiry as to how the public issue was allowed without there being documents showing ownership of DB Corp over Dainik Bhaskar.
- (ii) The Company denied such allegations and contended that more than adequate disclosure had been made in the Prospectus in all respects.
- (iii) I have considered such submissions. In the Prospectus, the Company had made disclosure of the Scheme as below:

Page no.	Statement/Disclosure
Front Cover page of the Prospectus	<i>Our Company was originally incorporated as 'Multi-Tech Energy Limited' under the provisions of the Companies Act, 1956. A certificate of incorporation was issued on October 27, 1995 by the Registrar of Companies ("RoC") Gwalior, Madhya Pradesh. The certificate of commencement of business was issued on June 26, 1998. Subsequently, the name of our Company was changed to 'D.B. Corp Limited' pursuant to shareholders resolution dated November 28, 2005. A fresh certificate of incorporation consequent to the change of name was issued on December 1, 2005 by the RoC. 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. For further details on our</i>

	<i>relevant demergers, see section titled “History and Certain Other Corporate Matters”.</i>
xxxvi	<i>Our Company was originally incorporated as ‘Multi-Tech Energy Limited’ under the provisions of the Companies Act, and has issued a certificate of incorporation dated October 27, 1995. Our Company received its certificate of commencement of business on June 26, 1998. Subsequently, our Company’s name was changed to ‘D. B. Corp Limited’ and a fresh certificate of incorporation dated December 1, 2005 was issued. 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. The registered office of our Company was shifted from 6, Dwarka Sadan, Press Complex, M.P. Nagar, Bhopal – 462011 to Plot No. 280, Sarkhej Gandhinagar Highway, Near YMCA Club, Makarba, Ahmedabad, – 380051, India by a shareholder’s resolution dated November 4, 2005.</i>
15/General Information	<i>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.</i>
115/History of our company – WPL demerger	<i>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 (“WPL Demerger”).</i> <i>The scheme of arrangement of the WPL Demerger provides that with effect from April 1, 2005 (“Appointed Date”) the business of publication, including the assets and liabilities, intellectual property rights, employees and printing of newspaper under the title 'Dainik Bhaskar' and 'Divya Bhaskar' shall stand transferred in our Company as a going concern. Further the scheme of arrangement of the WPL Demerger provides that the ownership of all land and buildings shall continue to be in the name of</i>

	<i>WPL with our Company having the right to use the immoveable property by way of lease or leave and license. For details on the lease agreements with WPL refer to section titled 'Our Business' beginning on page 79. The WPL Demerger became operative from December 12, 2006 ("WPL Effective Date").</i> <i>As consideration for such transfer, our Company issued and allotted 2,136,550 Equity Shares on December 12, 2006 to the shareholders of WPL in the following ratio</i> <i>Pursuant to the WPL Demerger, all legal proceedings pending on the Appointed Date, in relation to the publication business, continued to be enforceable by or against WPL and any proceedings initiated by any third party for acts or deeds of the publishing business, prior to the Appointed Date were to be initiated only against WPL.</i> <i>Further the scheme of arrangement provides, that from the date on which the High Court sanctions the WPL Demerger and on the date of receipt of the approval of the majority of persons directed under the WPL Demerger, all contracts, deeds, bonds, agreements and other instruments in relation to publication business to which WPL was a party became enforceable against or in favour of our Company.</i>
	<i>A Ajmera & Associates, chartered accountants, have by a letter dated October 30, 2009 have certified that:</i> <i>iii. Transfer/ vesting of publishing and wind energy business of WPL which was approved by Hon'ble Gujarat High Court, and,</i>
124	<i>2006 - Issuance of 152,610 Equity Shares of our Company to Cliffrose Investment Ltd pursuant to a scheme of demerger.</i>
F13 and F65	<i>1. (I) Scheme of Arrangement:</i> <i>a. Pursuant to the Scheme of Arrangement ("the Scheme") approved by Honbl'e Gujarat High court, under section 391 to 394 read with sections</i>

	<i>100 to 103 and other applicable provisions of the Companies Act, 1956, the Company has taken over the publishing and wind energy businesses of Writers and Publishers Limited (demerged entity), with effect from April 1, 2005, being the Appointed Date. All the assets and liabilities related to above-mentioned businesses of de-merged entity except land and buildings were transferred to the Company at their respective book values.</i> <i>b. The Scheme of Arrangement was effective from the Appointed Date (April 1, 2005) but was operative from the date on which the certified copies of the Orders of the High Court of Gujarat were filed with the Registrar of Companies (the Effective Date, which is December 12, 2006).</i> <i>Other related disclosures were also made.</i>
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- (iv) From the above statements, the Company had clearly mentioned about the Orders dated October 10, 2006 and December 22, 2006 of the Hon'ble Gujarat High Court, whereby the Scheme of arrangement was sanctioned and the publishing business and windfarm business of WPL were transferred to DB Corp.
- (v) In view of the statements and disclosures made in the Prospectus, it cannot be said that the facts regarding the Scheme of demerger came out only in the additional submissions of the Company.
- (vi) I also note that in terms of Part A Item (1)(a), the issuer company should disclose the source and basis of all statements. I find that the Company had made statements regarding the source/basis (being the approved Scheme of demerger vide which the Company acquired publishing business of WPL) of claiming that it is into publishing business.
- (d) Alleged misrepresentation regarding windfarm business:
- (i) The applicant has stated that the Order dated 22.12.2006 of the Hon'ble Gujarat High Court revealed that the same confined only to the publication business and that the

Company had made a misrepresentation in the Prospectus that the windfarm business was also transferred. The applicant alleged that neither the Scheme was filed along with the prospectus nor Clause 1.9 of the Scheme was brought to the notice of the public in general. According to the applicant, as per clause 1.9 'only such assets of the windfarm project pertaining to the publishing business' were transferred. The applicant alleged that this was a misrepresentation in violation of Part A Item XVIA(1) & (2) of Schedule VIII of the ICDR Regulations.

- (ii) The Company has responded by contending that there was no misrepresentation and relied on the said Orders of the Hon'ble Gujarat High Court.
- (iii) 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. The Hon'ble High Court of Gujarat, vide Order dated 10.10.2006 had sanctioned the Scheme of Arrangement between WPL and DB Corp 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 WPL as a going concern into D.B. Corp Limited'. Clause 1.9 of the said scheme *inter alia* stated as follows:

"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 :

....."

- (iv) The demerged company in this case is WPL. 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."

- (v) A reading of the Order dated 22.12.2006 suggests that WPL 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.* The definition of "publishing business" as defined in the Scheme appears to have not been amended. According to the Company, the publishing business included windfarm business of WPL also. The Company was a necessary party to the Scheme, being the entity to which the publishing and windfarm business was transferred under such Scheme. The other party, WPL has not contested this stand of the Company. Therefore, could a third party (applicant in this case) not connected with a suit or proceeding allege or interpret otherwise what was intended or agreed to by the concerned parties.

- (vi) The Company has made the following statements/representation in pages xxxvi, 15, 103 and 115 of its Prospectus and the same are mentioned below :

Relevant page no. of Prospectus	Reproduction of relevant contents from the Prospectus dated 20.12.2009
At page xxxvi	<i>"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....."</i>

At page 15	<i>"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....."</i>
At page 103	<i>"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"</i>
At page 115	"WPL Demerger" <i>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</i>

- (vii) The aforesaid statements had mentioned about the Scheme as sanctioned vide Orders dated 10.10.2006 and 22.12.2006.
- (viii) From the above discussions which have been based on documents, Court Orders and understanding of the Company, it may not be said that the Company made a misrepresentation regarding transfer of windfarm business.
- (ix) The applicant has also stated that in page 110 of the Prospectus, Ajmera & Associates, had certified that transfer/vesting of publishing and wind energy business of WPL which was approved by Hon'ble Gujarat High Court. According to the applicant, windmill business was not demerged as per the modified order dated 22.12.2006 and alleged that the said chartered accountant was in collusion with the promoters and have rendered themselves punishable u/s. 68 of the Companies Act, 1956. The charge regarding the windfarm business has been dealt with in the above paragraphs. According, this allegation has to be disposed of.
- (x) The applicant has also stated that on page no. 103 of the Prospectus, it was stated that DB Corp owns windmills with a total rated capacity of 4.50 MW in Madhya Pradesh and the electricity generated at its wind farm is currently sold to the State Electricity Board

pursuant to a power purchase agreement with a 20 year term. From the above statement, it becomes difficult to comprehend what has been alleged by the applicant.

(e) Issue price:

- (i) The applicant has also alleged that the issue price of Rs.212/- was not justified and on page x there was no mention about the basis of issue price. On page F4, there was no working details of the basis of the issue price. Thus, the Prospectus played a fraudulent game on the investors by referring to unrelated pages. Share with book value of Rs.17.86/- (as per Prospectus) and return on net worth @ 22.74% was valued at Rs.212/- instead of Rs.15/- as per CCI formula or valuation norms of 15%.
- (ii) In this regard, I note that the IPO of DB Corp was a 100% book-built issue. According to the ICDR Regulations, the price band of the shares offered to public through an IPO is determined by a company in consultation with the Merchant Bankers. The price band provides a range of price within which the applicants can make their bids during the period for which the issue remains open for bidding. The factors applicable for basis of issue price are disclosed in the offer document. Thereafter, the issue price is determined based on book building process which is undertaken to elicit demand and to assess the price for determination of the quantum or value of shares in accordance with ICDR Regulations. The issuer, in consultation with lead book runner, determines the issue price based on the bids received. Once the final price (cut-off price) is determined, all those bidders whose bids have been found to be successful (i.e. all those bidders who placed bids at or above the final price or cut-off price) become entitled for allotment of shares. Thus, the pricing of equity shares in a public issue is determined through a book building process. Hence, SEBI does not play any role in the determination of the price of shares during a Public Issue of securities. Upon listing, the price of the shares is determined by various market factors including demand and supply.

It also needs to be noted that 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.

- (iii) In the present case, at page iv of the Prospectus, the Company had stated –
“The price band with a minimum price (Floor Price) of Rs.185 and the maximum price (Cap Price) of Rs. 212, including any revisions thereof. The Price Band and the minimum Bid lot size for the Issue will be decided by us and the Selling Shareholder in consultation with the BRLMs and advertised by us in all editions of the national newspapers (one each in English and Hindi) and one Gujarati regional newspaper at least two days prior to the Bid/ Issue Opening Date”.

In the Prospectus, at page 56, it was stated-

“The Issue Price will be determined by us and the Selling Shareholder in consultation with the BRLMs on the basis of assessment of market demand and on the basis of the following qualitative and quantitative factors for the Equity Shares offered by the Book Building Process. The face value of the Equity Shares is Rs.10 and the Issue Price is 18.50 times the face value at the lower end of the Price Band and 21.20 times the face value at the higher end of the Price Band.”

The “Basis for Issue Price” is dealt with in pages 56 to 59 of the Prospectus. The investors were asked to refer to page 79 (Our “Business”) and page x (“Risk factors”). The Prospectus also mentioned about the ‘Quantitative factors’, ‘Weighted average earnings per share (EPS) on an standalone basis’, ‘Weighted average earnings per share (EPS) on a consolidated basis’, ‘price/earnings (P/E) ratio on a standalone basis’, ‘price/earnings (P/E) ratio on a consolidated basis’, ‘weighted average return on networth on a standalone basis’, ‘weighted average return on networth on a consolidated basis’, ‘NAV per equity share on standalone basis’, ‘NAV per equity share on a consolidated basis’. It was also stated -

“The NAV per equity share as at September 30, 2009 is Rs. 19.62

The NAV per Equity Share after the Issue is Rs. 27.82

The Issue Price per Equity Share is Rs. 212.

The Issue Price per Equity Share will be determined on conclusion of the Book Building Process.”

In page 59 of the Prospectus, it was also stated -

“The BRLMs believes that the Issue Price of Rs. 212 is justified in view of the above qualitative and quantitative parameters. For further details, see the section titled “Risk Factors” on page x and the restated financials of the Company including important profitability and return ratios, as set out in the section titled ‘Restated Financial Statements’ beginning on page F1 of this Prospectus to have a more informed view.”

Pursuant to the book-building activity to discover the price, the issue price has been fixed at Rs.212/- per equity share.

- (iv) As on December 10, 2015 (at BSE) the share price was around Rs.325.70/-. 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.
- (v) 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.

(f) Disclosure with respect to Bhaskar Industries Limited :

- (i) The applicant has also referred to the statements made with respect to Bhaskar Industries Limited (one of the promoter group companies). In this regard, I note the following:
- (ii) 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.

- (iii) 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.
- (iv) 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.
- (v) 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.

(vi) 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.

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

(g) Disclosure of IPO Grade:

(i) The applicant has alleged that the rationale for the grading of the IPO was not disclosed in the Prospectus. The SEBI Order dated 22.11.2013 had directed that this allegation be examined by SEBI.

(ii) Pursuant to the same, SEBI sought comments from the BRLM with respect to this allegations. The BRLM submitted its reply dated January 14, 2014, wherein it was *inter alia* submitted that –

(a) The Company had disclosed the name of the credit rating agency i.e. Credit Analysis and Research Limited (CARE) and details of the grade received from CARE on the cover page, page 22 and page 412 of the prospectus.

(b) The Company had also annexed letters dated 05.10.2009 and 04.12.2009 received from CARE, providing description of the grading based on fundamentals of the Company, to the Prospectus.

- (c) As disclosed on page 506 of the Prospectus as item (7) of 'material document's, the certificate from CARE was also kept as material document for inspection at the Company's registered office.
 - (d) The Company had confirmed that a copy of report from CARE furnishing the rationale for its grading was also kept at the Company's registered office for inspection by the public at large, as disclosed at pages 22 and 412 of the Prospectus.
 - (e) The rationale for grading was also disseminated to the public by the rating agency by uploading the same on their website as requirements of regulations 15(2) and 24(10) of the SEBI (Credit Rating Agencies) regulations, 1999.
 - (f) Therefore, the disclosures in Prospectus were in compliance with requirements of Schedule VIII Part A(2)(VI)(B)(10) of the ICDR Regulations.
- (iii) 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.
- (iv) On a perusal of the Prospectus of the Company, it is noted that CARE has assigned 'IPO Grade 4' indicating 'above average fundamentals' to the IPO of the Company. Therefore, '**description**' of the IPO grade has been disclosed. Further, the Prospectus also contains the letters dated October 05, 2009 and December 04, 2009 addressed to the Company informing/describing the IPO grade. The Company, in its Prospectus, at page 22 has mentioned "*A copy of the report provided by CARE, furnishing the rationale for its grading will be available for inspection at our registered office*". At page 412, it was mentioned "*A copy of the report provided by CARE will be made available for inspection at our registered office*". The 'rationale' for the IPO grading was available for inspection. Therefore, the requirement of Schedule VII Part A(2)(XVI)(A)(4), which requires that the IPO grading reports for each of the grades obtained by the unlisted issuer should be available for inspection, is also complied with.

- (v) In view of the above, it can be concluded that this allegation of the applicant is not sustainable.

(h) Allegations made by Kishori Devi, Hemlata Agrawal, Mahesh Prasad Agarwal, Sanjay Agarwal and Amit Goel:

The applicant has stated that the above said persons had alleged concealment of facts in the DRHP and alleged that the answer given in the Prospectus was grossly misleading. In this regarding, the following portions (pages – 121, 122 & 123) from the Prospectus need to be noted:

“Summary of objections raised by Mr. Mahesh Prasad Agarwal

Mr. Mahesh Prasad Agarwal, partner of M/s. Dwarka Prasad Agarwal & Brothers, partnership firm, having 30% stake in the business raised objections against the Draft Red Herring Prospectus dated August 12, 2009 filed by us alleging that our Company is unlawfully and illegally using the trade name “Dainik Bhaskar”.

The chairman of our Company, Mr. Ramesh Chandra Agarwal had fraudulently and illegally managed to prepare a forged and fabricated Sale Agreement on the basis of which he claims to be the owner of the title Dainik Bhaskar. He had subsequently transferred the ownership of the title of Dainik Bhaskar newspaper to WPL (subsequently demerged to become D.B. Corp Limited); who are still unlawfully and illegally enjoying the ownership of the title.

*The complainant has also alleged that the details of the M/s Dwarka Prasad Agarwal & Brothers has (“**DPAB Firm**”) been disclosed as one of the entities forming part of the promoter group of the Company.*

Our Response

*Details of the M/s Dwarka Prasad Agarwal & Brothers has (“**DPAB Firm**”) been disclosed as one of the entities forming part of the promoter group of the Company on page 149 in the section titled ‘Promoter, Promoter Group and Group Companies’ of the Red Herring Prospectus. The DPAB Firm forms part of the promoter group according to the definition of promoter group as provided in SEBI Regulations.*

Our Company has disclosed the ownership pattern of ‘Dainik Bhaskar’ and the transfer of rights to title from WPL to our Company in detail in the section titled ‘History and Certain Corporate Matters’ beginning on page 115 of the Red Herring Prospectus. Details in relation to the registrations obtained with the RNI under the PRB Act, applications for registration of newspapers in the name of the Company with the RNI under the PRB Act and declarations filed under the PRB Act have been included in the DRHP.

Summary of objection raised by Mr. Sanjay Agarwal

Mr. Sanjay Agarwal, owner of the title “Dainik Bhaskar” edition from Jhansi (U.P.) raised objections against the Draft Red Herring Prospectus dated August 12, 2009 filed by M/s D.B. Corp Limited. He alleged that the Company did not inform him before filing the Draft Red Herring Prospectus and is misleading the public by not informing them that the Dainik Bhaskar title in Jhansi

is registered in his name. D.B. Corp Limited does not have any intellectual property rights in their favour as regards the title in Jhansi, and, hence cannot use the same.

Mr. Sanjay Agarwal has alleged that the ownership of 'Dainik Bhaskar' in the state of Uttar Pradesh vests with him. The complainant has averred that by disclosing that some parts of 'Western Uttar Pradesh' with other persons, our Company has misrepresented the real status of ownership in Uttar Pradesh. He has stated that there cannot be two owners of the same title in one state. Further, he has averred that the our Company has filed a declaration before the District Magistrate (Gautam Budh Nagar) that is a violation of PRB Act.

Our Response

Summary of the response by our Company is as follows:

- 1. We have responded to complainant allegation by stating that all relevant disclosure in relation to incorporation and history of our Company has been made in the Red Herring Prospectus in the section titled 'General Information' and 'History and Certain Corporate Matters' and 'Government and Other Approvals' beginning on page number 364 Red Herring Prospectus.*
- 2. Further, the disclosure of RNI letter pursuant to the order of the Hon'ble Supreme Court in respect of Civil Appeal No. 4782 of 1996 with CA No. 4783 of 1996 and WP (C) No. 527 of 1993, ownership pattern of 'Dainik Bhaskar' and the transfer of rights to title from WPL to our Company in detail in the section titled 'History and Certain Corporate Matters' beginning on page 115 of the Red Herring Prospectus.*
- 3. In relation to the allegation that the Company has not disclosed the ownership of title 'Dainik Bhaskar' in Uttar Pradesh, Risk Factor 5 on page x of the DRHP, we have highlighted the fact that presently the Company cannot publish a newspaper titled 'Dainik Bhaskar' in the state of Uttar Pradesh where other parties operate.*
- 4. The Company had filed a declaration before the District Magistrate, Noida (Gautam Budh Nagar) on June 25, 2009. The District Magistrate, Noida (Gautam Budh Nagar District) by letter dated August 31, 2009 sought clarification from the Company. Subsequently we ascertained that Noida is a part of National Capital Region Area but for the purposes of filings and licensing Noida falls in the state of Uttar Pradesh and did not initiate any further steps for publishing from Uttar Pradesh as alleged by the complainant.*
- 5. In relation to the allegation that an objection has been filed by the complainant against the application for registration of trademark made by our Company for the trademark 'Dainik Bhaskar' and the same has not been disclosed in the DRHP. Post filing of the DRHP, we received an opposition dated October 9, 2009 from Mr. Sanjay Agarwal. For further details refer to section titled 'Government and Statutory Approvals' beginning on page 364 of the DRHP.*

Summary of objections raised by Mr. Amit Goel

Mr. Amit Goel raised objections against the Draft Red Herring Prospectus dated August 12, 2009 filed by M/s D.B. Corp Limited alleging that the Company should not be allowed to come out with an IPO due to several reasons:

- 1) As there are certain inconsistencies, and contradictions as regards the title of the newspaper*
- 2) The company has not disclosed its major suppliers of raw materials from the international market for the company*
- 3) Recently one of the Company's subsidiaries, Synergy Media Entertainment Limited had sold out its stake to one of its foreign investors namely Warburg Pincus. Clarity is hereby sought as to whether the Company has any previous agreements with Warburg Pincus pursuant to which this sale has taken place.*

Our Response

Summary of the response by our Company is as follows:

- 1. In relation to the allegation that our Company has not mentioned the details of dispute between the partners of M/s Dwarka Prasad Agrawal & Brother, please note that the dispute has been settled in the Order of Civil Appeal No. 4782 of 1996 with CA No. 4783 of 1996 and WP (C) No. 527 of 1993. Schedule VIII, Part A, clause of SEBI Regulations provides that an issuing company has to disclose only outstanding litigation. Considering the fact that the dispute between the partners of M/s Dwarka Prasad Agrawal & Brother is settled, our Company is not required to disclose the dispute.*
- 2. In relation to the allegation in relation to the disclosure of major suppliers of raw materials from the international market- , we have made the required disclosures in the section titled 'Our Business', wherein our Company has disclosed the details of the Indian suppliers and the international suppliers separately and the percentage of the newsprint that is imported or purchased.*
- 3. Our Company, SMEL had entered into a shareholders agreement with Cliffrose Investment Ltd for a proposed investment, the details of which have been disclosed in the section titled 'History and Certain Corporate Matters' beginning on page 115 of the Red Herring Prospectus. Further note that our Company, SMEL and Cliffrose have by an agreement dated December 1, 2009 terminated the agreement and the same has been disclosed in the section titled 'History and Certain Corporate Matters' beginning on page 115 of the DRHP."*

From the above statements in the Prospectus when seen in the light of the observations made in this decision, it would be difficult to find that the Company was 'grossly misleading' the investors.

18. The applicant has also alleged that under 'related party transactions' on page 232 of the Prospectus, it was shown that Mr. Ramesh Chandra Agarwal was one of the partners as on 30.09.2009 and has stated that enquiry has to be made as to why the names of Mahesh Prasad Agarwal, Hemlata Agarwal, Kishori Devi were missing. This allegation is with respect to the rights of persons in the said partnership firm. Whether they are partners or not would not be a question to be decided by SEBI.

19. The applicant has also stated that in page 117 of the Prospectus under the heading "History of our company", it was stated that the first edition of Dainik Bhaskar was published in Madhya Pradesh in late sixties. The applicant contends that when the Company itself was incorporated on 27.10.1995, how it could publish any edition in late sixties. The applicant also stated that DB Agarwal and Bros. was incorporated as a partnership firm in 1972 and therefore the aforesaid statement was fraudulent. I note that the Company has not made any specific submission with respect to this allegation. However, I am of the opinion that the Company has not made any claims over the ownership of the newspaper 'Dainik Bhaskar' in the late sixties. It is only giving an overall historical perspective. Nothing has been provided

by the applicant to show that the statement is factually wrong. I, therefore consider the allegation as baseless.

20. I also note that the applicant has contended that the RNI was required to restore the position as on 03.09.1992 in terms of paragraphs 7 and 40 of the Judgment dated 07.07.2003 of the Hon'ble Supreme Court and record the firm M/s. Dwarka Prasad Agarwal and Bros. as the owner of the title Dainik Bhaskar as prevailing on 03.09.1992. In this regard, I note that the 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. The relevant disclosures/representation made by the Company in page 117/118 of its Prospectus have been already mentioned above in this decision. 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.

21. I also note that the applicant, the Company, Ramesh Agarwal (Company's Promoter), Kishori Devi/Hemlata Agarwal and Mahesh Agarwal have filed suits pertaining to the title over Dainik Bhaskar and sale deed dated 13.03.1985. These questions regarding title need to be decided by the competent civil court. SEBI does not have any jurisdiction over such issues and is only concerned with the administration of the rules/regulations and guidelines formulated under the securities laws for preserving the interest of investors and securities market. Therefore, it would not be appropriate to make any observations with respect to such questions.

22. The objective of the SEBI regulations/guidelines on disclosures in offer documents is to provide adequate information about the issuer company, its business activities and any risk on the investment to the investor by investing in the said company. The intention of the SEBI regulations is not that no detail in a long intertwined legal battle is missed out in the Prospectus. The intention is that the investor should have an adequate idea of the risks involved. The Company has mentioned the dispute regarding the ownership of Dainik Bhaskar at more than 6 places and running over 8 pages in the Prospectus. The Company has informed the investors in clear terms 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*". The same in my opinion gives adequate idea of the legal risks possibly involved with respect to the title of Dainik Bhaskar and the loss that may be suffered if it is decided against the Company.

23. In view of the foregoing discussions and observations, the application dated May 15, 2013 read with all further submissions made by the applicant are accordingly disposed off.

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

**Date: December 11, 2015
Place: Mumbai**