

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved on : 7.12.17
Date of Decision : 20.12.2017

Appeal No.27 of 2016

Suresh N. Vijay
S/o. Late Mr. Shadilal Vijaywargia,
R/o Bungalow No.4, Vijaydwar,
People's Campus, Karond-Bhanpur,
By-pass, Bhopal, Madhya Pradesh. Appellant

Versus

1. Securities & Exchange Board of India
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai – 400051.
2. DB Corp Ltd.
Plot No.280, Sarkhej, Gandhinagar Highway,
Near YMCA Club, Makarba, Ahmedabad –
380 051. Gujarat, India. Respondents

Mr. Amalpushp Shroti, Advocate for the Appellant.

Mr. Kumar Desai, Advocate with Mr. Sonam Shethia and Mr. Sochit Kumar, Advocates i/b Juris Corp for the Respondent no. 1.
Mr. Ankur Mody, Advocate with Ms. Bijal Vora, Advocate i/b. Clove legal for Respondent no.2.

CORAM : Justice J.P. Devadhar, Presiding Officer
Dr. C.K.G.Nair, Member

Per : Justice J.P. Devadhar

1. This appeal is filed to challenge the order passed by the Whole Time Member ('WTM') of Securities and Exchange Board of India ('SEBI' for short) on 11th December, 2015. By the said order complaint filed by the appellant alleging that the Respondent no.2 had misrepresented /suppressed

material facts in the prospectus issued at the time of Initial Public Offering (IPO) in the year 2009 in gross violation of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 ('ICDR Regulations' for short) has been rejected.

2. Facts as set out in the memo of appeal/written submissions filed on behalf of the appellant are as follows:

- a) In April, 1972 a partnership firm was formed by 4 partners, inter alia to print and publish a newspaper known as 'Dainik Bhaskar' ('newspaper business' for convenience) from Bhopal.
- b) By an agreement of sale dated 13th March, 1985 the said firm through its partner Shri Dwarka Prasad Agarwal allegedly transferred the newspaper business alongwith its property and goodwill to Writers and Publishers Ltd. ("Writers" for convenience) for Rs.5 lakh for 10 years.
- c) Writers had filed civil suit no.74A of 1987 before the First Additional Judge, Bhopal, inter alia seeking a declaration that Writers is the owner of the business of Dainik Bhaskar published from Bhopal and its goodwill since 1.4.1985 and that nobody else is entitled to publish a newspaper in the name of "Dainik Bhaskar" from anywhere in India.
- d) There were interse disputes between the partners of the firm and their family members and hence several proceedings were initiated before different authorities/courts. In one such proceedings being Writ Petition No.802 of 1992 filed before the M.P. High Court a compromise memo was filed on 29.6.1992 and the said Writ Petition was disposed of on 29.6.1992 itself in terms of the

compromise memo. Dwarka Prasad Agarwal who was also a party respondent in the said Writ Petition was neither a party to the settlement nor signatory to the settlement memo.

e) Thereafter, the Registrar of Newspapers for India ('RNI' for short) on or about 3.9.1992 recorded the name of Writers as the owner of the newspaper 'Dainik Bhaskar'. In view of the above decision of M.P. High Court, appellant claims that an application was filed for withdrawal of Civil Suit No.74 A of 1987 and accordingly by order dated 27.10.1993 the said suit was dismissed as withdrawn.

f) Dwarka Prasad Agarwal filed appeals before the Apex Court to challenge the order of M.P. High Court dated 29.6.1992 and order of RNI dated 3.9.1992.

g) On 19.7.1993 Dwarka Prasad Agarwal passed away.

h) By its decision dated 7.7.2003 reported in (2003) 6 SCC 230 the Apex Court allowed the appeals filed by Dwarka Prasad Agarwal by holding that the settlement was fraudulent and hence illegal and accordingly the Apex Court inter alia quashed the order of M.P. High Court dated 29.6.1992 and order of RNI dated 3.9.1992. The Apex Court further held that all orders and actions taken pursuant to or in furtherance of compromise memo must be declared as wholly illegal and without jurisdiction. Appellant submits that since Civil Suit No.74 A of 1987 was withdrawn pursuant to M.P. High Court decision dated 29.6.1992, on the Apex Court setting aside the order of M.P. High Court, the Civil Suit No.74 A of 1987 stood revived and became an outstanding litigation.

- i) On an application filed by Writers, the Gujarat High Court on 10.10.2006 sanctioned a scheme of arrangement in the nature of demerger. As a result of demerger, the business of publishing the newspaper Dainik Bhaskar was transferred to Respondent no.2. By a subsequent order dated 22.12.2006 the Gujarat High Court modified the said order dated 10.10.2006 to clarify that on demerger, only the publishing business of writers stood transferred to the Respondent no.2.
- j) On 20.12.2009, Respondent no.2 came out with an IPO and accordingly issued a prospectus thereby offering shares of Respondent no.2 to the investing public on terms as more particularly set out therein. It is the case of the appellant that the prospectus issued by Respondent no.2 contained several misrepresentations and suppression of material facts from the investors which were in gross violation of ICDR Regulations.
- k) By a deed of assignment dated 24.2.2010 some of the family members of Late Dwarka Prasad Agarwal assigned their proprietary rights title and interest in the business of the newspaper Dainik Bhaskar to the appellant.
- l) Thereafter, appellant filed an application in Civil suit no.74 A of 1987 for being impleaded as party defendant in the said suit which according to the appellant stood revived pursuant to the order of the Apex Court dated 7.7.2003.
- m) However, by an order dated 7.5.2013 the first Additional District Judge Bhopal dismissed the application filed by the appellant on ground firstly that civil suit no.74 A of 1987 was not dismissed on the basis of compromise memo but was dismissed on the basis of

application filed by the plaintiff (Writers) that it did not want to proceed further in the case and therefore, the Apex Court decision dated 7.7.2003 had no relevance to the present case. Secondly, assuming that the Apex Court's decision dated 7.7.2003 was applicable to facts of present case, since plaintiff (Writers) had not moved any application for restoration of the suit, the appellant who was not even a party to the suit could neither seek restoration of the suit nor seek an order for being impleaded as party defendant in the suit. Thirdly it was held that Dwarka Prasad Agarwal had died during the pendency of the suit and as the plaintiff had not initiated any proceedings for bringing the legal heirs of Dwarka Prasad Agarwal on record no further action could be taken in the suit till the legal heirs of the dead party were brought on record.

n) Appellant, thereupon filed a complaint before SEBI on 15.5.2013 alleging that in the prospectus issued in the year 2009 during the IPO, the respondent no.2 had

- i. suppressed agreement of sale dated 13.3.1985,
- ii. suppressed civil suit no.74A of 1987,
- iii. misrepresented that on demerger, the wind farm business was also transferred to the respondent no.2,
- iv. suppressed the scheme of demerger by failing to offer the same for inspection.

In view of the above gross violation of ICDR Regulations, the appellant requested SEBI to issue suitable directions against respondent no.2.

o) By an order dated 22.11.2013 the WTM of SEBI rejected the complaint filed by the appellant for the reasons set out therein. The said decision was challenged by the appellant and by an order dated 13.11.2014 this Tribunal set aside the order of WTM dated 22.11.2013 and directed SEBI to pass fresh order on merits and in accordance with law.

p) Thereafter, the matter was heard again and by the impugned order dated 11.12.2015 the WTM of SEBI held that there was no misrepresentation or suppression of material facts in the prospectus issued by Respondent no.2 and accordingly disposed of the complaint filed by the appellant without issuing any direction to the Respondent no.2.

3) Mr. Shrotri learned advocate appearing on behalf of the appellant submitted as follows:

a) Ownership of the newspaper Dainik Bhaskar was allegedly acquired by Writers under an agreement of sale deed dated 13.3.1985 and Respondent no.2 had acquired the business of publishing the newspaper Dainik Bhaskar from Writers on account of demerger. Thus the agreement of sale dated 13.3.1985 being the nucleus of title of Respondent no.2 over 'Dainik Bhaskar', under Rule 57(2)(a)(ii) of the rules framed by SEBI read with Part A, Item 1(a) of Schedule VIII of ICDR Regulations, the respondent no.2 ought to have disclosed the same in the prospectus. Moreover, the agreement of sale dated 13.3.1985 was not shown under 'Other Information' in the list of material contract with the prospectus as required under Part A Item (2) XVI (A)(i)(2) and (3) of Schedule VIII of ICDR Regulations.

Thus, the respondent no.2 had suppressed agreement of sale dated 13.3.1985 in the prospectus.

b) WTM of SEBI has accepted the plea of the appellant that the agreement of sale dated 13.3.1985 was the nucleus of title, however, the WTM of SEBI has held that the agreement of sale dated 13.3.1985 was the document of title of Writers and not the document of title of Respondent no.2 and therefore the Respondent no.2 was not required to disclose the agreement of sale dated 13.3.1985 in the prospectus. According to the WTM, disclosure of various letters issued by RNI including the letter dated 18.6.2004 and disclosure of the orders passed by the Gujarat High Court approving the scheme of demerger were sufficient disclosure in the prospectus. Appellant submits that the Respondent no.2 had conceded before the Gujarat High Court that the demerger proceedings were not for determination of right title and interest of the parties in the business of publishing the newspaper Dainik Bhaskar. Apex Court decision in the case of S.S. Apparao vs. B. Laxmi Narayan reported in AIR 1962 SC 586 was also brought to the notice of the appellant wherein it is held ownership of the press is to be decided by a civil suit and not by way of declaration made before RNI. However, ignoring the above facts on record the WTM has erroneously held that the agreement of sale dated 13.3.1985 which was the nucleus of title was not required to be disclosed in the prospectus.

c) Civil suit no.74 A of 1987 filed by Writers claiming ownership of the business of publishing the newspaper Dainik Bhaskar, which was dismissed as withdrawn on 27.10.1993 stood

revived pursuant to the decision of the Apex court dated 7.7.2003. Thus, Civil Suit No.74A of 1987 being an ‘Outstanding litigation’ ought to have been disclosed in the prospectus as contemplated under the SEBI rules and ICDR Regulations. Fact that the respondent no.2 had disclosed in the prospectus that the ownership of publishing the newspaper Dainik Bhaskar was challenged in the past and could be challenged again in the future and such challenge if upheld could have adverse impact on the reputation and goodwill of respondent no.2 could not be a ground for the WTM to hold adequate disclosures were made in the prospectus. In the absence of disclosure of the name of the person who had challenged the ownership of Dainik Bhaskar and in the absence of disclosure of the case number, merely on the basis of vague statement made in the prospectus the WTM could not have held that there is no failure to disclose outstanding litigation in the prospectus.

d) The Respondent no.2 had made false representation in the prospectus by stating that under the scheme of demerger approved by the Gujarat High Court they had also acquired the wind farm business. Neither in the order dated 10.10.2006 nor in the order dated 22.10.2006 the Gujarat High Court had recorded that on demerger the wind farm business has also been transferred to the Respondent no.2. On the contrary, by order dated 22.10.2006, the Gujarat High Court had clarified that only the publishing business has been transferred to respondent no.2. However, by relying on clause 1.9 of the scheme of arrangement which defined the expression “publishing business” would include the wind farm business, the WTM has purported to hold

that the wind farm business was also transferred to Respondent no.2. Admittedly clause 1.9 of the scheme of arrangement was not reproduced anywhere in the prospectus. In these circumstances, the WTM is not justified in rejecting the plea of the appellant that the Respondent no.2 had misrepresented to the investors that the wind farm business was also transferred under the scheme of arrangement.

e) Similarly, the respondent no.2 is guilty of suppressing the scheme of demerger in the prospectus. Neither the order of Gujarat High Court approving scheme of demerger on 10.10.2006 nor the clarificatory order issued by Gujarat High Court on 22.12.2006 was shown under 'other information' in the list of material contract with the prospectus and produced before SEBI for inspection as required under the ICDR Regulations. In these circumstances counsel for the appellant submitted that the order passed by the WTM of SEBI being totally erroneous and contrary to the facts on record deserves to be quashed and set aside.

4. We see no merit in the above contentions.

5. First grievance of the appellant is that the agreement of sale dated 13.3.1985 being the nucleus of title for the respondent no.2 to carry on the business of publishing the newspaper 'Dainik Bhaskar', the said agreement of sale ought to have been disclosed in the prospectus. It is relevant to note that pursuant to the agreement of sale dated 13.3.1985 Writers were entitled to print and publish the newspaper 'Dainik Bhaskar' and on demerger, Respondent no.2 acquired that right from Writers. Admittedly on demerger, all consents and approvals issued to Writers including the RNI

Registrations in relation to printing and publishing 'Dainik Bhaskar' were transferred from Writers to the name of respondent no.2.

6. In the prospectus issued in the year 2009, the respondent no.2 had disclosed that the ownership right of publishing 'Dainik Bhaskar', as per the RNI records, was with Writers and that the respondent no.2 had acquired the right to publish 'Dainik Bhaskar' from Writers on account of demerger approved by the Gujarat High Court on 10.10.2006.

7. Appellant contends that disclosing the ownership right of publishing 'Dainik Bhaskar' without disclosing the agreement of sale dated 13.3.1985 amounts to suppressing material facts in the prospectus. We see no merit in the above contention, because, Office of the Registrar of Newspapers for India (RNI) established under the Press and Registration of Books Act, 1867 which is regulating and monitoring the business of printing and publishing newspapers in India is statutorily required to maintain records relating to the ownership rights of the persons publishing newspapers in India. Therefore, office of the RNI being the competent authority in relation to publishing newspapers in India, the records maintained by the office of RNI would be the material information relating to the news paper business. In the present case, the respondent no.2 had disclosed in the prospectus the ownership details based on the records maintained by RNI. Since the office of RNI is the competent authority in relation to printing and publishing newspapers in India, it was open to the respondent no.2 to rely on facts recorded by the office of RNI.

8. It is neither the case of the appellant that the ownership details given in the prospectus are contrary to the records maintained by the office of RNI nor it is the case of the appellant that under the agreement of sale dated

13.3.1985 Writers did not have the right to publish 'Dainik Bhaskar'. Therefore, the details given in the prospectus relating to ownership right of publishing Dainik Bhaskar being true and in consonance with the details available with RNI, the appellant is not justified in holding that non disclosure of the agreement of sale dated 13.3.1985 amounts to suppressing material facts in the prospectus.

9. As rightly observed in the impugned order, object of making disclosures in the 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. Since the ownership details relating to publishing Dainik Bhaskar were disclosed in the prospectus as per the records maintained by RNI, in the facts of present case, it cannot be said that any information relating to the ownership of publishing 'Dainik Bhaskar' has been suppressed in the prospectus.

10. Material information required to be disclosed in the prospectus was the name of the owner publishing 'Dainik Bhaskar'. Fact that Writers under the agreement of sale dated 13.3.1985 had the ownership right to publish 'Dainik Bhaskar' is not in dispute. Therefore, in the facts of present case, since contents of the agreement of sale dated 13.3.1985 were disclosed in the prospectus, it cannot be said that the said agreement of sale was suppressed from the investors.

11. No doubt that there were disputes between the Agarwal family members relating to the ownership of publishing 'Dainik Bhaskar'. Although some of the said family members had entered into a compromise memo on 29.6.1992 and the same was accepted by the M.P. High Court, the Apex Court on 7.7.2003 had set aside the compromise memo, M.P.

High Court decision and all orders passed on the basis of the compromise memo. It is relevant to note that the office of RNI had taken note of the Apex Court decision dated 7.7.2003 and accordingly intimated to several District Judges in Madhya Pradesh regarding the ownership of 'Dainik Bhaskar' as on 29.6.1992 and after 29.6.1992 and the respondent no.2 had disclosed the same in the prospectus. Thus, the prospectus disclosed the status of the family disputes relating to the ownership of publishing 'Dainik Bhaskar' even after the Apex Court decision dated 7.7.2003.

12. Apart from the above, since the ownership dispute continued even after the Apex Court decision dated 7.7.2003, the respondent no.2 had also disclosed in the prospectus as follows:-

“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.”

Thus, in the facts of present case, since material facts relating to the ownership of publishing 'Dainik Bhaskar' and the disputes relating thereto as also the consequences of the said disputes were disclosed in the prospectus, in our opinion, the appellant is not justified in contending that non disclosure of agreement of sale dated 13.3.1985 amounts to suppressing material facts in the prospectus.

13. Argument advanced on behalf of the appellant that the agreement of sale dated 13.3.1985 was the nucleus of title for carrying on the business of publishing 'Dainik Bhaskar' and therefore, the said agreement of sale ought to have been disclosed in the prospectus is without any merit, because, admittedly the nucleus of title, namely the ownership flowing from the said agreement of sale deed was disclosed in the prospectus. In other words, the nucleus of title which was the material fact was disclosed, but not the document in which the nucleus of title was set out. In such a case, since contents of agreement of sale dated 13.3.1985 were disclosed, the appellant is not justified in contending that the agreement of sale dated 13.3.1985 has been suppressed in the prospectus.

14. Strong reliance was placed by the counsel for appellant on the decision of the Apex Court in case of S.S. Apparao (supra). In that case the Apex Court has held that ownership of the press is to be decided by a Civil Suit and not by way of a declaration made before RNI. In our opinion, that decision has no bearing on the facts of present case, because, the disclosures made in the prospectus were not for the purpose of establishing title but to disclose the facts that existed on the date of issuing prospectus. In fact, the disclosure made in the prospectus relating to the ownership right of Writers to publish 'Dainik Bhakar' was the substance of the agreement of sale dated 13.3.1985. Moreover, it is also disclosed in the prospectus that disputes were raised in the past and could be raised in the future relating to the ownership of publishing Dainik Bhaskar and if those disputes are allowed it would adversely affect the reputation and goodwill of respondent no.2. Thus the decision of the Apex Court in case of S.S. Appa Rao (supra) is wholly distinguishable on facts.

15. Second argument of the appellant is that in view of the Apex Court decision dated 7.7.2003, Civil Suit No.74A of 1987 filed by Writers became an 'outstanding litigation' and therefore, that outstanding litigation ought to have been disclosed in the prospectus. We see no merit in the above contention. As rightly held by the WTM, Civil Suit No.74A of 1987 was dismissed as withdrawn in view of the application filed by Writers for withdrawal of the suit and not on the basis of the compromise memo approved by the M.P. High Court. Assuming that the said suit was dismissed as withdrawn in view of the compromise memo, admittedly no steps were taken for restoration of the suit even after the Apex Court set aside the compromise memo on 7.7.2003. In such a case, it cannot be said that Civil Suit No.74A of 1987 became an outstanding litigation after the Apex Court decision dated 7.7.2003. Moreover, Dwarka Prasad Agarwal who was defendant in Suit No.74A of 1987 had died on 19.7.1993 and admittedly his legal heirs were not been brought on record. Thus, on the date on which the prospectus was issued, admittedly Suit No.74A of 1987 was not a pending litigation and therefore argument of the appellant that Civil suit no. 74A of 1987 was an outstanding litigation and failure to disclose the same in the prospectus amounts to suppressing material facts in the prospectus cannot be accepted.

16. Third argument of the appellant is that the respondent no.2 had made false statement in the prospectus that under the scheme of demerger approved by the Gujarat High Court they had also acquired the wind farm business, because, neither in the order dated 10.10.2006 nor in the order dated 22.10.2006 the Gujarat High Court had recorded that the wind farm business had also been transferred to the respondent no.2. We see no merit

in the above contention, because, clause 1.9 of the scheme of arrangement approved by the Gujarat High Court defines the expression ‘publishing business’ thereunder would include the wind farm business. Fact that clause 1.9 of the scheme of arrangement was not reproduced in the prospectus would not falsify the fact that wind farm business was transferred to the respondent no.2. Moreover, factually the respondent no.2 is carrying on wind farm business is not in dispute. In such a case, argument of the appellant that the respondent no.2 had made a false statement in the prospectus regarding the wind farm business cannot be accepted.

17. Last argument of the appellant is that the respondent no.2 is guilty of suppressing the scheme of demerger in the prospectus by failing to produce the same before SEBI for inspection as required under the ICDR Regulations. We see no merit in the above contention, because, fact that the respondent no.2 had been publishing ‘Dainik Bhaskar’ pursuant to the demerger approved by Gujarat High Court on 10.10.2006 is not in dispute. Since that fact was disclosed in the prospectus, fact that the scheme of demerger and the Gujarat High Court order approving the demerger were not made available for inspection cannot be a ground to hold that the scheme of demerger was suppressed in the prospectus. It is equally important to note that all the above grievances relating to the prospectus issued in the year 2009 are made in the year 2015 not by any investor who had invested in the shares of respondent no.2 but by the appellant who claims to have acquired certain rights in the year 2010. In such a case, proper course for the appellant is to seek remedy through Civil Court and not by filing complaint before SEBI.

18. For all the aforesaid reasons we see no merit in the appeal and the same is hereby dismissed with no order as to costs.

Sd/-
Justice J. P. Devadhar
Presiding Officer

Sd/-
Dr. C.K.G.Nair
Member

20.12.2017

Prepared and compared by
RHN