

**BOARD FOR INDUSTRIAL AND FINANCIAL RECONSTRUCTION**

**SPECIAL Bench**

**M/S DECCAN CHRONICLE HOLDINGS LTD.**

**SUMMARY RECORD OF PROCEEDINGS OF THE HEARING HELD ON  
07.04.2014 BEFORE THE SPECIAL BENCH CONSISTING OF  
SHRI S.C. SINHA AND SHRI J.P. DUA, MEMBERS.**

<b><u>Present</u></b>	<b><u>Name &amp; Designation of the Representative S/Shri</u></b>
M/s Deccan Chronicle Holdings Ltd.	Alok Dhir, Advocate Nilesh Sharma, Advocate Sandeep Kr. Gupta, FCA Raghav Soni, Consultant
IDFC Canara Bank	Sushmita Banerjee, Advocate Ajay K. Jain, Advocate Ravi Kumar, AGM Sushil Garg, Officer Atanu Mukherjee, Advocate
JM Financial ARC (Ratanakar Bank & YES Bank)	Rajive R. Raj, Advocate
Indiabull Housing Finance Ltd.	Ajay Rewal, Chief Manager Sumesh Dhawan, Advocate Abhinav Vashishta, Sr. Adv. (present, did not signed)
AXIS Bank	Jogendra Singh
Tata Capital Financial Services Ltd.	S.R. Jariwala, CA Arpan Sarkar, Legal Manager
Corporation Bank	Rama Ahluwalia, Advocate
KMBL	Prem Sharma, AVP-Legal D.U. (name not legible), Advocate R.R. Kumar, Advocate
J & K Bank	Bashir Khan, Associate Exec.
Central Bank of India	I.P.S. Oberoi, Advocate J.P. Vijay, Sr. Manager

Karur Vysya Bank Ltd.	Vijay Kumar, Advocate Rekha Anand, Advocate A. Vishwanathan, Manager
Religare Finvest Ltd.	Sushmita Banerjee, Advocate B. Raju
LIC of India	Sidhartha Karwani, Advocate
ICICI Securities	Amit Mishra Archit Virmani
L&T Finance	Punit K Bhalla, Advocate Chetna Bhalla, Advocate Isha Abrol, Advocate Rajesh Talwatkar, AGM Legal
ICICI Bank	Rajesh Bohra, Advocate (present, did not sign)

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1.1 M/ s. Deccan Chronicle Holdings Ltd., based on the Provisional accounts of the company for the financial year 2012-13 filed a reference on 26/ 8/ 2013 seeking registration as a sick Industrial company under Section 15 (1) of the SICA.

1.2 The Registrar, in accordance to the provisions of Regulation 19 of the BIFR Regulations, 1987 scrutinized the reference of the company and vide his letter dated 17/09/2013 granted 'conditional' registration to the company subject to their submission of Final Accounts for the year 2012-13.

1.3 However, on further scrutiny, and in view of the deficiencies found in the reference, the Registrar-BIFR, withdrew the 'conditional registration' granted to the company on 17/9/2013, and vide his letter dated 19/09/2013 'Declined' to grant registration to M/ s. DCHL.

1.4 The company aggrieved by the Registrar's order, filed an appeal on 27/09/2013 before the Secretary-BIFR as per Regulations 19 (8) (1) of the BIFR Regulations 1987.

1.5 The said Appeal was disposed off by the Secretary-BIFR, and registration was once again Declined to the company vide his order dated 21/11/2013.

1.6 M/s. DCHL., in accordance to Regulation 19 (8) (2) of the BIFR Regulations 1987, on 29/11/2013, preferred an Appeal before the Hon'ble Chairman-BIFR.

1.7 Hon'ble Chairman-BIFR held an Appeal hearing in the matter on 12/12/2013. Vide his order dated 13/01/2014, Hon'ble Chairman-BIFR disposing of the Appeal stated

“.....The Company in appeal has not been able to demonstrate that the company registered under the Press and Registration Books Act, 1867 can be deemed to be a manufacturing activity under the IDR Act, 1951. The business of printing and running of newspapers is clearly not covered under the First Schedule of IDR Act, 1951 and thus not for admission to BIFR.

In view of the aforesaid reason and analysis of the grounds in appeal, I am not inclined to interfere with the order passed by the Secretary, BIFR dated 21.11.2013. As such the appeal filed by M/s. Deccan Chronicle Holdings Ltd., is dismissed”

2.1 Consequent to the rejection of their Appeal by the Chairman-BIFR, the petitioner filed a Civil Misc.Petition No. 1505/2014 and Writ Petition (Civil) No. 750 of 2014 on 21/01/2014, against the BIFR, before the Hon'ble High Court of Delhi, challenging Chairman's order dated 13/01/2014.

2.2 The Hon'ble High Court while disposing of the petition, set aside the orders issued by the Registrar, Secretary and the Chairman, and directed the BIFR to hear the matter. The directions of the Division Bench are reproduced below:

“We have heard the Learned Counsel for the Petitioner as well as the Learned Counsel for the BIFR. We have also heard the Learned Counsel for

some of the Creditors including Canara Bank. After hearing the Counsel for the parties it has been agreed that the order dated 19.09.2013 passed by the Registrar-BIFR as also the order dated 20.11.2013 passed by the Secretary-BIFR and the order dated 13.01.2014 issued by the Chairman-BIFR in exercise of his powers under Regulation 19 (8) of the BIFR Regulations, 1987 be set aside. It is ordered accordingly.

Serious issues have been raised with regard to the validity of the registration of the reference of the petitioner by virtue of the Registrar's order dated 17.09.2013. It has been agreed by the counsel for the parties that the issue of the validity of registration be considered by the Board. Consequently, we direct that the Board shall consider this question in the first instance. The learned counsel for the creditors submits that, they are entitled as a right to be present on the date on which the Board will hear this question. However, for better safety they shall be moving an appropriate application on or before the date on which the Board is to hear the matter and that application would be heard simultaneously with the hearing of the above mentioned question. The matter be placed before the Board on 18.02.2014. We also hope that the Board shall endeavour to conclude the hearing and render a decision on the question as to whether the reference was correctly registered or not within a period of four weeks after hearing all the parties interested. The learned counsel for the petitioner has no objection to the creditors being heard. Since one of the orders which has been set aside by us is that of the Chairman of the BIFR, it would be appropriate if the Chairman is not a member of the Bench which hears the matter on 18.02.2014 on the issue. We may it clear that we have not expressed any opinion on the merits of the case. The writ petition stands disposed off in the above terms. All pending applications also stand disposed off."

3. In the hearing held on 18.02.2014, the Bench observed that Hon'ble High Court of Delhi vide order dated 03.02.2014 has directed that the matter be placed before the Board on 18.02.2014 and the Board shall endeavor to conclude the hearing and render a decision on the question as

to whether the reference was correctly registered or not within a period of four weeks after hearing all the persons interested. The Bench also observed that Registrar, BIFR has issued the hearing notice dated 17.02.2014 in compliance to the Hon'ble High Court of Delhi, Division Bench Order dated 03.02.2014. Therefore, the Bench proceeds with today's hearing to decide the validity of registration as per Hon'ble High Court Order dated 03.02.2014. Accordingly, the inadvertent error cited by company's counsel in Registrar's Notice is inconsequential. The Bench issued the following directions:-

- (i) Company to provide a copy of Form-'A' to all concerned by 22.02.2014.
- (ii) All concerned to file their objection on the validity of Registration to Board's office, with a copy to the company by 27.02.2014. Those who will not file their objection by 27.02.2014 forfeit their right to file objection.
- (iii) Company to file reply on the objections received from the creditors to Board's office, with a copy to all concerned by 14.03.2014.
- (iv) The Bench fixed the next date of hearing on 19.03.2014 at 11.00 hrs for final arguments on the validity of Registration.

4. In the hearing held on 19.03.2014, the Bench observed that Hon'ble High Court of Delhi vide order dated 03.02.2014 has directed that the matter be placed before the Board on 18.02.2014. Today's hearing is in continuation to the hearing held on 18.02.2014. The Bench also noted that a large number of secured lenders of the company stated that either they had received copy of Form 'A' late or they are yet to receive. Accordingly, the Bench issued the following directions:-

- (i) A last opportunity is given to all the secured lenders of the company to file their objection on the validity of Registration, as directed by Hon'ble High Court of Delhi vide its order dated 03.02.2014, latest by 26.03.2014, with copy to the company.

- (ii) Thereafter, the company to file its reply within a further period of one week, with copy to respective parties.
- (iii) The company to file proof of delivery of Form 'A' to all concerned within a period of one week to the Board's office.
- (iv) The next date of hearing to consider the objections on the validity of Registration in compliance of the Hon'ble High Court of Delhi vide its order dated 03.02.2014 is now fixed on 07.04.2014 for final argument on the Validity of Registration.

5.1 In today's hearing (07.04.2014), the ld advocate representing the company stated that after the date prescribed by the Bench, the company has received objections from IOB on 29.03.2014 and the company has sent its reply on 03.04.2014. The company also received objections on the validity of registration on 04.04.2014 from ICICI Securities, but did not reply due to shortage of time. The company had already received rejoinder on behalf of Canara Bank and IDFC. The Bench observed that those who have not filed their objections to the validity of registration till now, their right to filing such objections stand forfeited.

5.2 The ld advocate representing IDFC stated that IDFC had already filed its preliminary objections to the validity of registration. The ld advocate added that she also represent Religare Finvest Ltd, who has not filed its objections to the validity of registration, however, they adopt the same objections as filed by the IDFC in this respect. The ld advocate added that both IDFC and Religare Finvest Ltd has some pertinent submissions with regard to maintainability of the registration. First objection is that the company is not a scheduled industry as per Section 3(f) of SICA. She added that the company is not an industrial undertaking as it is not into manufacturing. The company is a newspaper company and only publishes papers. Thus it does not carry any manufacturing activity. The company does not own a factory license carrying out the activities mentioned in item-24 of Schedule-1 of IDR Act, 1951. The ld advocate drew the attention of the Bench to decision of Hon'ble High Court of Delhi in the matter of Ansal

housing & Construction Ltd Vs Commissioner of Income Tax, wherein, High Court is of the opinion that common sense approach will have to be adopted and those undertaking would qualify as “industrial undertakings” which are involved in “manufacturing activity” In the instant case (Ansal Housing), the activity of construction can, by no stretch of imagination, be treated as manufacturing activity as it does not amount to manufacture or production of an article or a thing. Thus, considering the same analogy, in the present case, the company is not involved in the manufacturing of a product and therefore it does not qualify as an industrial undertaking. Second objection is that, the secured creditors have taken SARFAESI Action on the assets of the company, which were exclusively charged to them and therefore, as per the judgment of Hon’ble AAIFR in the matter of M/s Sheel International case, the company would have to come to BIFR after modifying the balance sheet i.e. removing those assets from the books of accounts, where already action under SARFAESI has been taken. Thus, considering these facts, both IDFC and Religare Finvest Ltd requested the Bench to reject the instant reference filed by the company.

5.3 The Id advocate representing Canara Bank stated that they have two fold objections on the validity of the Registration. The company has six units located at Secunderabad, Vijaywada, Rajahmundry, Anantapur, Karimnagar and Nellore, but none of them falls under the Scheduled Industry as defined under Section 3(1)(n) of SICA. The company is registered with the Registrar of Newspaper of India, Govt. of India under the Press and Registration of Books Act, 1867. The company does not qualify as an Industrial Company as defined under section 3(1)(e) and 3(1)(f) of SICA. He added that as per section 3(1)(n) of SICA, Scheduled Industry means any of the industries specified for the time being in the First Schedule to the Industries (Development and Regulation) Act, 1951. The First Schedule of IDR Act, 1951 have excluded “Newspaper” from its purview. As such, the company does not fulfill the conditions as envisaged under Section 3(1)(n) of SICA and therefore not eligible to file reference under section 15 of SICA. Secondly, the company has filed improper Form-A, which is a Statutory

Form and have failed to provide correct information(s). He drew the attention of the Bench to Column 3(d) of Form-A, which is incomplete and incorrect. The company instead of providing information in respect of its registration under the IDR Act, 1951, has admitted that the company is registered under the Press and Registration of Books Act, 1867. The company again instead of enclosing the Registration Certificate under IDR Act, 1951, has enclosed Certificate showing registration under the Press and Registration of Books Act, 1867. The company in its reply has made an attempt to take shelter under the Notification No.477(E) dated 25.07.1991 and have stated that by virtue of the said Notification, the company is exempted from obtaining registration under IDR Act, 1951. This plea is clearly an afterthought and an ingenious ploy to over reach the Statute. Further, it is an undisputed fact that Deccan Chronicle is engaged in the Newspaper Industry for the last 75 years. It was formed as a partnership Firm in the year 1938 for carrying on the business of publication of 'Deccan Chronicle' and 'Andhra Bhoomi'. It is undisputed that the company owns six units and all these six units existed prior to the incorporation of Deccan Chronicle Holding Ltd and even prior to the notification dated 25.07.1991. All the aforesaid entities were admittedly engaged in publishing of Newspaper like 'Deccan Chronicle' and 'Andhra Boomi' and the said activity of Publishing Newspaper is not covered under the First Schedule of IDR Act, 1951. Therefore, the said entities/ companies are not registered under IDR Act, 1951. Further, the term "printing" as envisaged by entry 38 of First Schedule of IDR Act does not take the activity of publishing of "Newspaper" within its ambit. Thus, the company continues with the same line of business / activities as was done by its predecessor and therefore the company claims it is not entitled to be registered under the IDR Act, 1951. The notification of 25.07.1991 does not override the statutory provisions of SICA and the said Notification does not therefore entitle the company to be treated as an 'industrial company' having one or more 'industrial undertaking' pertaining to 'schedule industry' under the IDR Act 1951 and also as per SICA, 1985. Lastly, the secured creditors of the company have taken action under section 13(4) of SARFAESI Act, 2002 and taken over



assets charged to the secured creditors. Taking into consideration the judgment of Hon'ble AAIFR in the matter of M/s Sheel International, the company will be able to file fresh reference before BIFR on the basis of appropriately modified balance sheet. In the instant case, the company itself has not modified the balance sheet, before filing the reference before BIFR. Thus, Canara Bank is not asking for abatement, but considering the fact that the company has not modified the balance sheet which is apparent from their Form-A and enclosures, on this ground also Registration of the Company's Reference is not maintainable.

5.4 The Id advocate representing JM Financial ARC stated that they fully support and adopt the line of submission taken by Canara Bank with regard to validity of Registration.

5.5 The Id advocate representing Indiabull Housing Finance Ltd (IBHFL) stated that they fully support and adopt the objection made by Canara Bank on validity of Registration. Besides this, IBHFL wants to submit that the Company claims that they are in the business of 'Printing', which is completely misleading and factually incorrect. The Company is in the business of Newspaper publication and "Newspaper" industry is not covered under the First Schedule of IDR Act, 1951. He then read the Section 3(1)(e), 3(1)(f), 3(1)(n) & 3(1)(o) of SICA and stated that the company does not fall under either of Section 3(1)(e), 3(1)(f) & 3(1)(n) of SICA. Thus, the company which does not fall in either of these Sections cannot file reference under Section 3(1)(o) of SICA. He added that it was never the intention of the legislature to include any or all incidental or ancillary activities being carried on by any entity, and the reference to activities specifically covered under First Schedule to IDR Act was made only to restrict the industries, which could file and maintain a reference under SICA. The company in the present case is guilty of misrepresenting facts, as it has deliberately and mischievously classified its publishing and selling of newspapers activity allegedly as that of "Printing", in order to somehow get covered under Scheduled Industry under the IDR Act. Newspaper Industry is not a

Scheduled Industry under the IDR Act. The company is also not registered under the IDR Act. The company in fact is only engaged in the activity of “publishing newspaper” and “periodicals” and their sale and the activity of printing is merely an intermediate process. If the company argues that its activity of printing of newspaper for publishing and sale is actually a printing industry activity, was to be accepted, then any or all incidental process being carried out by any industry could be used to bring the activity of such company under the First Schedule of IDR Act, even though it may not be its main activity. Taking into consideration, Printing Industry per se means that an entity, being a company, doing printing activity as its main activity / business directly, and generating revenue directly from such printing activity. For example, if a Law Firm, which does cyclostyling / printing of its documents for submission to various courts, cannot claim to be Scheduled Industry, under the IDR Act. Similarly, an Airline Company, who are printing tickets and baggage tags in large number for its passenger(s), cannot be considered to be Scheduled Industry and cannot avail the benefits of SICA. He drew the attention of the Bench to Item-24 of the First Schedule to IDR Act and stated that it would clarify that it was never the intention of legislature to include the business of newspaper or publication or printing thereof under the ambit of IDR Act.

5.6 Continuing, the Id advocate representing Indiabull Housing Finance Ltd drew the attention of the Bench to page-1155 of Form-A (Balance Sheet) and stated that the source of revenue is shown as only from advertisement, circulations and sale of merchandise. There is no direct income from printing. The company argues that income from the printing is inbuilt, in fact, itself shows that activity of printing is just a process. The Id advocate then drew the attention to page-1181 of Form-A and stated that in the explanatory statement in the Annual Report of the company, the industry overview is mentioned the Company’s industry as “Indian Entertainment & Media Industry”. The Id advocate also drew the attention of the Bench to BIFR order dated 25.06.2013 in BIFR Case No.5/ 2013 – M/ s Suryachakra Global Enviro Power Ltd has observed that the company in its Form-A has

admitted that they are engaged in generation of power by use of bio-mass / agro based products and they are supplying power to earn profits. The Industry generating and supplying Power (Electricity) does not fall within the ambit of the industry covered under First Schedule to IDR Act, 1951. In the instant case, the Bench also observed that Bio Fuels is an intermediate product, which company is not selling for earning profits rather than the company itself is using it to generate power, which is their main line of business. The Bench was of the view that the company – M/ s Suryachakra Global Enviro Power Ltd is not a scheduled industry engaged in the manufacture or production of Fuel Gases – (Coal Gas, natural gas and the like) under Heading-2 and sub heading(3) of First Schedule to IDR Act, as they claimed in its Form-1. Thus, on this very ground, the Bench dismissed the Company's reference – M/ s Suryachakra Global Enviro Power Ltd – as non-maintainable. Similarly, there is an another BIFR Case No.61/ 2012 – M/ s South Asian Agro Industries Ltd, where the Bench also dismissed the reference on the same ground. He also referred para-5 of the judgment of Hon'ble High Court of Madras in the matter of EPFO Vs Madras Pencil Factory. Lastly, the Id advocate also stated that as per Section 2(d)(b) of the Working Journalists and Other Newspaper Employees (Condition of Service) and Miscellaneous Provisions Act, 1955 a printing press is deemed to be a Newspaper Establishment, if the principal business thereof is to print newspaper. Thus, it is clear from this definition that the business of the company cannot by any stretch of imagination be called business of printing as admittedly the principal business of the company is to publish newspaper. Also, the reference filed by the company has been filed on the basis of provisional accounts for the Financial Year 2012-2013, which is not permissible under SICA. Thus, taking all these above mentioned facts, the reference filed by the company is not maintainable.

5.7 The representative of Axis Bank stated that they fully support and adopt the objections taken by Canara Bank and Indiabull Housing Finance Ltd with regard to validity of Registration. He also stated that the company

has not mentioned about the CBI enquiry proceeding against the company and its management in Form-‘A’.

5.8 The Id Consultant representing Tata Capital Financial Services Ltd (TCFSL) stated that they have three basic objections. First being that the company is not eligible to come under the purview of SICA as its end product (publication of Newspaper) does not find place in the First Schedule to IDR Act, 1951. As per Section 3(1)(f) of SICA, Industrial undertaking means any undertaking pertaining to a scheduled industry carried on in one or more factories by any company. In the instant reference, the company does not own any industrial undertaking as defined u/ s 3(1)(e) of SICA and printing is not a main business activity of the company. The Id Consultant drew the attention of the Bench to the case of Damania Shipping Ltd, which had its own in-house engineering workshop to carry out captive repair and maintenance of its own ships / vessels being its end activity to carry passengers to and from Mumbai – Goa. Since shipping was specifically barred from availing the beneficial provisions of SICA u/ s 1(4) of SICA, the said company, in order to come under the purview of BIFR and to keep its creditors at bay, decided to commercialize its operation of engineering workshop, which is listed in the First Schedule of the IDR Act, 1951. In spite of the fact that the said activity of engineering workshop is listed in the said First Schedule and the company showed production / sale of engineering items. Hon’ble Board held that the said company had made a façade of manufacturing and dismissed the said reference. Continuing, the Id Consultant added that every reference is to be accompanied by the Audited Accounts and in the instant case, the accounts filed by the company could not be relied upon as the auditors of the company had explicitly mentioned in the notes of the accounts for the financial year ending 31.03.2013, that they are unable to express their opinion as to whether the accounts of the company represent a true and fair view of the state of affairs of the company. The Id Consultant relied upon the Order of Hon’ble AAIFR in the matter of Forgings (P) Ltd in Appeal No.4/ 1990, wherein, Hon’ble AAIFR clearly held that the provisional accounts cannot be relied upon for the

purpose of registration of reference / declaration of sickness of an industrial company. Taking into consideration of these facts and auditors remark in the account of the company, the reference of the company should be rejected. Furthermore, it can be observed that the net worth of the company is negative by just Rs.4.05 crores, when the affairs of the company run into thousands of crores of rupees. This is only indicative of the facts that the accounts are fudged, concocted, doctored and tailor-made to erode the net worth marginally so as to pave way for filing reference with BIFR and avail undue and unfair protection under section 22(1) of SICA. Lastly, the Id Consultant representing the company drew the attention of the Bench to Hon'ble AAIFR order dated 07.05.2013 in Appeal no.51/2012 in the matter – M/s Western State Engineers Ltd, wherein, Hon'ble AAIFR has observed that only such of the losses as are arising from the scheduled activity covered under SICA can be allowed to be taken into account for determination of sickness. In the instant reference, the losses sustained by the company are only on account of activities which are not scheduled activities i.e. conducting IPL cricket matches and other secondary business. Thus, the Id Consultant representing TCFSL requested the Bench to dismiss the registration filed by the company.

5.9 The Id advocate representing Corporation Bank stated that they had already filed their objections to the validity of registration to the Board's Office on 26.03.2014 and also forwarded the copy of the same to the company on 24.03.2014. The company is incorporated under the Companies Act, 1956 on 16.12.2002. The company has six units located at Secunderabad, Viyayawada, Rajmundry, Anantapur, Karimnagar and Nellore, but none of them falls under the 'Scheduled Industry' as defined under section 3(1)(n) of SICA. The company is registered with Registrar of Newspaper of India, Govt. of India under the Press and Registration of Books Act, 1867. The company does not qualify as an 'Industrial Company' as defined under Section 3(1)(e) of SICA since the company does not own any 'Industrial Undertaking' pertaining to a 'Scheduled Industry' as mentioned under Section 3(1)(f) of SICA. The company is not registered under IDR Act

and IDR Act has excluded “Newspaper” from its purview. Thus the company does not fulfill the conditions as envisaged under Section 3(1)(n) of SICA and therefore is not eligible to file Reference under Section 15 of SICA. Further to this, the company is otherwise ineligible to file reference under SICA, has filed an improper Form-A and has failed to provide correct information. The information required at Column 3(d) of Form-A is incorrect and incomplete, as the company instead of providing registration under IDR Act, has stated that the company is registered under the Press and Registration of Books Act, 1867. The company has not enclosed any Registration Certificate under the IDR Act, 1951, instead only filed Certificate showing registration made under the Press and Registration of Books Act, 1867. Thus, the Corporation Bank requests the Bench to dismiss the Registration of the company as non-maintainable.

5.10 The Id advocate representing KMBL stated that KMBL holds the similar view as submitted by Canara Bank and other parties in the hearing. He added that KMBL’s main objection is that the company is not into the manufacturing activity. The company does not qualify under section 3(1)(f) and 3(1)(o) of SICA. The company is engaged in the business of printing and publishing newspaper and is registered as a “Newspaper” under the Press and Registration Books Act, 1867. It is worthwhile to mention that until now the company has failed to demonstrate that the company can be deemed to be a manufacturing activity under the IDR Act, 1951 since the business of printing and running of newspaper is clearly not covered under the First Schedule to IDR Act, 1951 and thus the reference of the company is liable to be rejected. He added that Ministry of Corporate Affairs is inquiring into the alleged violations of Company Law by the company and the same very fact was concealed by the company before the Board while submitting its reference. CBI has already registered a case against the Chairman of the company for criminal conspiracy, cheating and forgery after several irregularities were found in the balance sheet of the company in Forensic Act, which again the company did not disclose in Form-A

submitted before BIFR. The Id advocate requested the Bench to dismiss the Registration of the company filed before BIFR.

5.11 The representative of J&K Bank stated that they did not file their reply. He added that J&K Bank support and adopts the submissions made by Axis Bank.

5.12 The Id advocate representing Central Bank of India stated that they had filed their objections, which has been taken on record. The company has also filed its reply to the Objections. He added that the main activity of the company is publication of Newspaper and Periodicals. Printing is an in-house activity of the company. The Id advocate drew the attention of the Bench to the judgment of Hon'ble Supreme Court in the matter of Andhra University Vs PF Commissioner and Osmania University Vs ESIC, wherein these University printing question paper and periodicals, because of these printing activity, they are covered under PF and ESIC Act. However, their printing activity is ancillary and is not covered or registered as an industrial undertaking under IDR Act. Similarly, Publication Division of DAVP who print periodical and other news journal cannot be covered under IDR Act. Similarly, in the instant case, the company's main activity is Publication of Newspaper, which is not covered under IDR Act. The Id advocate requested the Bench to dismiss the registration filed by the company.

5.13 The Id advocate representing Karur Vysya Bank Ltd stated that they fully support and adopts the submissions made by Canara Bank. He added that the major losses incurred by the company come from Entertainment and sale of retail business Odyssey and IPL .

5.14 The Id advocate representing LIC of India stated that they had filed objections on 26.03.2014. The Id advocate representing the company intervened and stated that they had not received the copy of the objections filed by LIC of India. The Id advocate representing LIC of India added that most of the objections are covered by other secured lenders of the company.

LIC of India wants to add that the root cause of the company to file the present reference before BIFR is to stall the recovery proceedings and cases filed by secured lenders and Govt. of India taking cover under section 22(1) of SICA. He added that the company is registered as a Newspaper under Press and Registration of Books Act, 1867. This activity / item of manufacture do not feature in the First Schedule of the IDR Act, 1951. The company claims to be an industrial undertaking, whereas a copy of the relevant certificate issued by the Secretariat of Industrial Assistance (SIA), Department of Industrial Policy and Promotion (DIPP), Govt. of India, indicating industrial status of the company, item of manufacture, number and date of registration under the Industries (Development and Regulation) Act, 1951, has not been submitted to substantiate this claim. The company has filed the reference based on the provisional accounts for the financial year ending on 30.06.2013. There is no recession or slowdown in the Newspaper Industry. The company has defaulted on loans from various lenders aggregating to more than Rs.4000.00 crores. Most of the lenders have filed litigations against the company. The management of the company has fabricated story, concealed vital information and suppressed material facts while seeking loans from banks and financial institutions. Lastly, the ld advocate representing LIC of India stated that if this reference is registered by this Hon'ble Board, it will send a wrong signal and message to large number of borrower companies who are likely to be declared as willful defaulters by banks and financial institutions. He requested the Bench to dismiss the reference made by the company.

5.15 The representative of ICICI Securities stated that they fully support and adopts the submission made by Canara Bank.

5.16 The ld advocate representing L&T Finance stated that they had received the copy of Form-A, out of which part of Form-A are illegible and not readable. L&T Finance taken up the matter with the company and a legible copy was supplied on 05.04.2014. Due to this and paucity of time L&T Finance Ltd adopts the reply and objections of all the other creditors as



every creditors has come to this forum with a common intention of not letting the company – M/s Deccan Chronicle to misrepresent as a sick company.

5.17 The Id advocate representing ICICI Bank stated that he has not received any instruction. The Bank has not filed its objection till date.

5.18 The Id advocate representing the company stated that the company filed a reference before BIFR on 26.08.2013. Registrar, BIFR registered the reference vide letter dated 17.09.2013. However, Registrar BIFR, immediately vide his letter dated 19.09.2013 withdrew the said registration granted by him. Thereafter, the company challenged the action of Registrar declining the registration before Secretary, BIFR. Secretary, BIFR vide its order dated 21.11.2013 has rejected the appeal filed by the company. Thereafter, the company made an appeal before Hon'ble Chairman, BIFR. Hon'ble Chairman, BIFR after hearing the company upheld the order of Secretary BIFR and Registrar BIFR vide its order dated 13.01.2014. He referred to the decision of Hon'ble Supreme Court of India in the matter of Real Value Appliances Vs Canara Bank, wherein, Hon'ble Court has held that once reference of a sick company is registered, it is mandatory for the BIFR to conduct an enquiry under Section 16(1) of SICA. In view of this judgment, Registrar BIFR cannot interfere with the jurisdiction of the Bench of Hon'ble BIFR by withdrawing the registration granted by him. Aggrieved by the decision of Hon'ble Chairman BIFR, the company filed a Writ Petition before Hon'ble High Court of Delhi, wherein, Hon'ble High Court vide its order dated 03.02.2014 has set aside the order dated 19.09.2013 of Registrar, BIFR; the Order dated 21.11.2013 passed by Secretary, BIFR; and the Order dated 13.01.2014 passed by Hon'ble Chairman BIFR. Hon'ble High Court further directed that since the objections have been raised by several parties, hence after hearing all the persons interested a decision may be taken by the Hon'ble BIFR on the preliminary question as to the validity of the reference filed by the company. The role of Registrar is limited to examining whether reference filed under

section 15(1) is complete and that the same can be put up before a Bench of the BIFR. The Registrar, BIFR does not have any quasi judicial powers under the provisions of BIFR Regulations or SICA and that the said powers are vested as per Section 12(1) of SICA with the Benches of BIFR or the AAIFR. The Id advocate drew the attention of the Bench with regard to judgment of Hon'ble AAIFR referred during the hearing – in the matter of Western State Engineering Ltd with regard to break of earning from main activity and secondary activity. He added that he is not aware of such order passed by Hon'ble AAIFR, and as such he cannot reply without reading the entire judgment of Hon'ble AAIFR.

5.19 The Id advocate representing the company stated that the second aspect of lack of natural justice. He added that Section 3(1)(e), (f), (n) or (o) of SICA does not describe or deal with the issue of earning from main activity and secondary activity. Secondly, the issues raised by the various creditors also strengthen the cause of the sick company as apparently the said issues i.e. whether the company's business of printing and publication of newspapers, magazines etc falls within printing activity, whether the business activity of the company falls within the definition of the scheduled industry etc. are the substantive questions of law and facts and cannot be decided by Registrar, while registering the reference of the company. He added that the company is in the business of printing and publishing of newspapers, magazines, periodicals journals etc as is evident from the main objects of the company as per its Memorandum of Association. The Id advocate then drew the attention of the Bench through various section of Press and Registration of Books Act, 1867; Parliamentary Proceedings (Protection of Publication) Act 1956 and explicitly described the word "Newspaper". He added that from the expression of Newspaper it clearly emerges that the following are the essential requirement for publication to fall under the definition of "Newspaper" – it must be printed; it must be issued periodically; it must contain news and comments on news; such news must be public. He further added that "Printing" is an activity or a process and not a product or end in itself. The final product shall only be

an outcome of the process or activity of printing and may be in form of a newspaper printing, book printing, printing of labels, pamphlets, printed carton, printed posters etc. It is further submitted that as per the Item 38 of the First Schedule to IDR Act, 1951 and in specific sub-clause(5) of Item 38 the activity of printing is clearly covered i.e. "Printing, including litho printing industry". Thus, it is clear that any industry which is engaged in the business of Printing (whether be it books, paper, newspaper, journals, magazines etc) shall qualify to be an eligible industry under the First Schedule to IDR Act. The Id advocate then drew the attention of the Bench to decision of Hon'ble Delhi High Court in the matter of CIT Vs Hindustan Times Ltd, wherein, it was held that the printing and publication of a newspaper is also an industrial undertaking. He read the relevant para-6 of the judgment of Delhi High Court dated 02.08.1999. Similarly, there is another judgment of Hon'ble Delhi High Court in the matter of CIT Vs M/ s Delhi Press Patra Prakashan Ltd, wherein again the Court has held that printing activity carried out in an industrial undertaking would amount to manufacturing. He read the relevant para-51, 56 of the judgment. Thus, he added that there are catena of judgments of High Court & Supreme Court, which demonstrate that the activity of printing and publishing of newspaper etc being carried out by the company – M/ s Deccan Chronicle is well within the ambit of definition of manufacturing activity covered under item 38(5) of First Schedule to IDR Act.

5.20 Continuing, the Id advocate drew the attention of the Bench to Section 3(1)(e) of SICA and stated that "Industrial Company" means a company who owns one or more industrial undertaking. Section 3(1)(f) deals with Industrial Undertaking, means any undertaking pertaining to a scheduled industry carried on in one or more factories by any company. And Section 3(1)(n) of SCIA defines "Scheduled Industry" means any of the industry specified for the time being in the First Schedule to IDR Act, 1951. Finally Section 3(c) defines "factory" means any premises, including the precincts thereof, in any part of which a manufacturing process is being carried on or is ordinarily so carried on. Thus, considering all these the instant company

has all the requisites of an “Industrial undertaking” are being fulfilled in as much as the company is carrying on the printing activity by itself on the printing machines owned by the Company and installed at the factory premises of the Company. Secondly the printing activities of the company are being carried out in a ‘factory’ as defined under IDR Act, and as such the company has obtained factory licenses under the Factories Act, 1948 for its six individual factories. Thirdly, the company is engaged in manufacturing process (printing activity) is being carried out with the help of power and employs more than 50 workers. As such the company fulfills all the qualifications of being an ‘industrial company’ (as defined u/s 3(e) of SICA), owning one or more industrial undertakings. Further, Printing on a standalone basis is not an article or a product; instead it has to be some sort of printing either on paper, box, carton, label, cloth etc. to be able to derive a final or an intermediate product. Hence by any stretch of imagination, it cannot be fathomed that printing of newspaper does not fall within the category of ‘Printing’ under the First Schedule to IDR Act. Printing in an eligible industry under the First Schedule of IDR Act. The Id advocate then referred to judgment of Hon’ble AAIFR in the matter of Krimpex Synthetics Ltd order dated 01.08.1996, wherein, in para-14 of the order, Hon’ble AAIFR has observed that in order to qualify as an industrial company, a company may have several other activities but should own at least one industrial undertaking.

5.21 The Id advocate representing the company stated that the third aspects of objection is about SARFAESI Action taken by the secured creditors. Indiabull Housing Finance Ltd did take action under SARFAESI Act, 2002. Hon’ble High Court of Andhra Pradesh vide its order dated 04.02.2014 set aside the action taken by Indiabull Housing Finance Ltd. Aggrieved by the decision of Hon’ble High Court of Andhra Pradesh filed an SLP before Hon’ble Supreme Court of India, wherein, Hon’ble Supreme Court vide its order dated 28.02.2014 has directed to maintain status-quo on the property of the company. At this juncture, the Id advocate representing the company stated that he would take more time to complete

its part argument, as it has to deal with individual objection raised by 14 (fourteen) secured creditors. He added that due to paucity of time, the Bench may permit him to file a written submissions on the line of argument being done in today's hearing alongwith relevant order and reference thereof.

5.22 Having considered the submissions made in the hearing and material on record, the Bench directed that all those parties including the company may file their written submissions on the line of the submissions made in the hearing latest by 15.04.2014. The Bench "Reserved its Order" on the validity of Registration in compliance of the Hon'ble High Court of Delhi vide its order dated 03.02.2014

Let a copy of this order be circulated to all concerned.

**(J.P.DUA)**  
**MEMBER**

**(S.C.SINHA)**  
**MEMBER**