

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, AT HYDERABAD

C.P. No. 615/111A/CB/2012

(TP No.116/HDB/2016)

Date of Order: 20.03.2017

In the matter of:

1. MSPL Limited

Represented by its Managing Director,
No.117, "Baldola Bhavan", Maharshi Karve Road,
Mumbai-400 020.

..... Petitioner

Vs

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

1. NMDC Limited,

Registered Office at Khanij Bhawan 10-3-311/A,
Castle Hills, Masab Tank,
Hyderabad-500 028.

2. Aarthi Constultants Private Limited,

1-2-285, Domalguda,
Hyderabad-500 029.

3. Amrit Steel Private Limited,

Flat No.212, 2nd Floor,
Golf Apartments, Sujan Park,
New Delhi-201 001.

4. Mr. Vinod B Metha,

501, Techno Residency, Flat No.84,
Hindu Colony, Road No.2,
Dadar East, Mumbai-400014.



5. M/s. Stock Holdings Corporation of India,
Account, LIC Mutual Fund,
Mittal C B-Wing, 2nd Floor, 224 Nariman Point,
Mumbai-400 012.

6. Ms. Subash Y Joshi
¼ Shefalee Pherozshah Road,
Santacruz West,
Mumbai-400 054.

7. Ms. Sunita Rathi,
H.No:3-2-409, Rathi Niwas,
Chappal Bazar, Hyderabad-500 027.

8. Mr. Vijay Kumar Agarwal,
Flat No.212, Second Floor,
Golf Apartments, Sujan Singh Park,
New Delhi – 110 002.

9. Mr. Anil Maliwal,
Flat No.1409, 14th Floor, Raj Madhur,
B-Wing, Near Club Aquria,
Devidass Road, Borivali (W),
Mumbai-400 092.

10. Mr. Bijal Kishor Madhani,
11/1102, Sharnti Tower,
Shanti Path, Ghat Kopar (East),
Mumbai – 400 077.

11. Delhi Iron & Steel Co. Private Limited,
Flat No.212, 2nd Floor, Golf Apartments,
Sujan Park, New Delhi -201 001.



12. Ms. Leena R Gada,
A-401, Tower 1, A-Wing, Vikas Paradise,
L.V.S. Marg, Mulund West,
Mumbai-400 080.

13. M/s. Saroj Bhalchandra Talati,
5 B Lamington Chamber,
394 C Lamington Road,
Mumbai- 400 004.



14. National Securities Depository Limited (NSDL)
4th Floor, A-Wing, Trade World, Kamala Mills Compound
Senapati Bapat Marg, Lower Parel
Mumbai - 400013

15. Central Depository Services (India) Limited (CDSL)
17th Floor, PJ Towers,
Dalal Street, Fort,
Mumbai – 400001

..... Respondents

Counsel for the Petitioner: Sh.T.V.Suresh Kumar and N.A.Srinivasan

Counsel for Respondent Nos. 1 & 2: Sh. S.Mukundan

Counsel for Respondent No.9: Sh.K.Venkat Reddy

CORAM:

Hon'ble Mr. Ravikumar Duraisamy, Member (Technical)

Hon'ble Mr. Rajeswara Rao Vittanala, Member (Judicial)

ORDER

(AS PER RAVIKUMAR DURAISAMY, MEMBER (T))

1. The present Petition was initially filed before Hon'ble Company Law Board, Chennai Bench, Chennai (CLB). Since the National Company Law Tribunal, Hyderabad Bench (NCLT) has been constituted for the cases pertaining to states of Andhra Pradesh & Telangana, the case is transferred to NCLT. Hence, we have taken it on records of NCLT and deciding the case.

2. The present Petition has been filed Under Section 111A of the Companies Act, 1956 by seeking a direction to grant interim injunction restraining the respondent No.1 to 13 and their men, agents, representatives, attorneys, successors, assignees and any person or person claiming under them whatsoever manner to further transfer or alienate or dematerialize the bonus shares pending disposal of the petition and suspend the voting rights of Respondents 3 to 13 with respect to the bonus shares.

3. The case was initially listed before the Hon'ble Company Law Board (CLB) on 20.04.2012 wherein R.3 to R.13 were absent. After hearing both the sides the Bench recorded that R.3 to R.13 shall maintain the status quo with regard to impugned bonus shares until further orders. Notice was served on R.3 to R.13. R.1, R.2 and R.9 filed their counters. The petitioner also sought permission of the Bench to implead NSDL and CDSL as party to the main petition. The same was allowed by the Bench on 03.12.2012. The Petitioner filed an application being CA No.193/2012. Upon the service of the Application on the proposed Respondents, they filed counter to the application. The Bench was of the view that the proposed respondents are necessary parties at least they can provide the information with regard to the shares held in dematerialized form. In view of the reasons, the application was allowed, directing the petitioner to implead the proposed respondents as respondents 14 & 15 to the main petition and amend the cause title of the petition forthwith. After amendment the petitioner is hereby directed to serve copy of the amended petition to the Respondents No.



14 & 15. After receipt of the amended petition the said respondents may file their counter to the amended petition within a period the three weeks and serve copies on the other side.

Later, on 15.10.2014 the Bench allowed impleadment application by impleading R.14 and R.15 as Respondents. CA No.1/2005 filed by the petitioner seeking condonation of delay of 216 days in filing amended petition and the delay was condoned by the Bench on 09.09.2015. Subsequent to the transfer of the case from CLB, Chennai Bench to NCLT, Hyderabad Bench, the case was listed on 02.08.2016. Again none appeared for the Petitioner as well as the other respondents except R.1. When the matter was posted on 19.08.2016, the counsel for the petitioner and R1, R2 were present. None appeared for the remaining respondents and notice was ordered for the remaining respondents. The Registry, NCLT issued notice to the remaining parties dated 06.09.2016. R.10 submitted her response to the Registry of NCLT vide letter dtd.15.09.2016 and the same was received on 19.09.2016. The notice issued by the Registry by speed post to Subash Joshi was returned as undelivered with remarks as "Expired". R.9 submitted a letter dated 06.10.2016 which is received by the Registry, NCLT on 14.10.2016. In his letter he has stated that "I, hereby, surrender the 2000 bonus shares consideration dt.05.10.2016 and Dividend Transfer Bank statement dt.05.10.2016 and an Affidavit for surrender of shares and dividend amount. Request NCLT Officer to settle the case amicably and remove the name from the petition list."

When the matter was heard on 30.09.2016, counsel for the petitioner, R.1, R.2, R.3 and R.9 were present. The parties were directed to submit documents, judgements, mode of purchase of shares etc., on or before 17.10.2016. Counsel for R.1 and R.2 submitted their written submission on 19.10.2016. R.3 vide letter dated 08.10.2012, 19.08.2013, 25.02.2015 and 28.09.2016 submitted her response to the present C.P. The petitioner has submitted his written arguments on 07.10.2016 and the same was received by the Registry on 17.10.2016.

4. The brief facts of the case as averred in the Petition are as follows:-
 - a. The Petitioner company is a Public Limited Company, incorporated in the name and style of MSPL Limited in the year 1961 under the



Companies Act, 1956, with the Registration CIN – U13100MH1961PLC012160, having its registered office at No.117, Baldola Bhavan, Maharshi Karve Road, Mumbai-400 020.

- b. The Authorized Share Capital of the company is Rs.500,000,000/- (Rupees Fifty Crores only) divided into 10,00,00,000 (Ten Crores) equity shares of Rs.5/- (Rupees Five) each amounting to Rs.50,00,00,000/- (Rupees Fifty Crore Only) and its issued, subscribed and paid up capital is Rs.38,40,00,000/- (Rupees Thirty Eight Crore and Forty Lakhs only) divided into 7,68,00,000 (Seven Crore Sixty Eight Lakhs) equity shares of Rs.5/- (Rupees Five) each amounting to Rs.38,40,00,000/- (Rupees Thirty Eight Crore and Forty Lakhs)
- c. The Petitioner Company is presently engaged in the business of iron ore mining and power generation through wind mills since 1961.
- d. The Petitioner Company submits that section 111A of the Companies Act, 1956 has not laid down any limitation for filing the petition. The Petitioner Company has purchased 2900 equity shares of National Mineral Development Corporation Limited (R1 Company) with face value of Rs.10/- from Respondents 3 to 13 in physical form on various dates during the period 2006-2008. The Petitioner has paid entire share consideration vide Rs.1,09,21,676.94. Accordingly transfer deeds have been executed in favour of the Petitioner Company thereby making the transfer complete as between the transferors and transferee.
- e. The Petitioner submits that during the period 2008, the bundle of all the physical shares along with the transfer deeds were misplaced in the office of the Petitioner Company and it could not be traced till 2010. The same were traced out while rearranging the existing filing structure/documentation in the month of August 2010. Thereafter the Petitioner Company have revalidated the transfer deeds and sent the same along with original share certificates to the second respondent “Aarthi Consultants Private Limited” who is the Registrar and Share Transfer Agent of the first respondent for registration of shares on 23.08.2010.



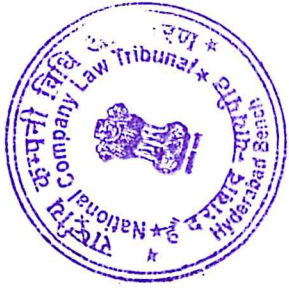
- f. During the period 2008, the first respondent had sub-divided the face value of the shares from Rs.10/- per share into Rs.1/- per share and had issued bonus shares in the ratio of 2:1 (Two new shares of Rs.1/- each for every one old share) The record dates fixed for such sub-division & bonus shares were 21.04.2008 and 22.05.2008 respectively.
- g. The petitioner respectfully state that after receiving the request for effecting share transfer, the first respondent's (NMDC Limited) member's registers had been updated and the sub divided shares had been transferred in the name of the Petitioner Company with effect from February 2011 and new share certificates were issued in the name of Petitioner Company for the subdivided shares. However, the first respondent has not transferred bonus shares to the Petitioner Company, which is accrued from the original shares. In this regard, the petitioner has sent a letter dated 19.09.2011 to the first respondent company. The first respondent's agent has sent a reply dated 13.10.2011 to the petitioner company, intimating that all the bonus shares were dematerialized by the respective above Respondents 3 to 13 on various dates. The petitioner humbly point out here that some of the Bonus Shares were dematerialized by the first respondent after the petitioner company's request for transfer of the bonus shares.
- h. Petitioner Company has stated that once the first respondent has agreed to update and split the shares to Petitioner Company and issue share certificates, they have to transfer the bonus shares to the Petitioner Company. The Petitioner being the original shareholder, are entitled to all the benefits accrued form the original shares including bonus shares. The respondents 3 to 13 have illegally retained bonus shares though they are not owners of the original shares.

We have heard the Learned Counsel for the Petitioner and the Learned Counsel for the Respondents and have perused all the connected case records.

5. The Learned Counsel for the Petitioner makes the following submissions in his written arguments:



- a. The Petitioner submits that, in his letter dated 19.09.2011 he informed the 1st Respondent that though the 1st Respondent has enabled the stock-split and issued 29,000 shares of Re.1 each to the Petitioner, the 1st Respondent has not transferred the bonus shares which are issued to the Petitioner's original shares.
- b. He further submits that the 1st and 2nd Respondents have themselves agreed in their counter statement that the Board of the 1st Respondent Company issued Bonus Shares in the ratio of two bonus shares of nominal value of Re.1 each of every one share of nominal value of Re.1 held in the company. Thus, 1st Respondent has violated the procedures as stipulated under Companies (Issue of Share Certificates) Rules, 1960, since the bonus shares cannot be issued unless the shares with face value of Rs.10 each is split into face value of Re.1.
- c. The Petitioner also pointed out that some of the bonus shares were dematerialized by the 1st Respondent after the Petitioner Company's request for transfer of the bonus shares was made i.e., 23.08.2010. They submit that Section 6 of the Depositories Act, 1996 explains the procedures for conversion of physical shares into electronic form and the 1st and 2nd Respondents have done all the above said process deliberately even after Petitioner's request to transfer the subject bonus shares in its name.
- d. Further, the Petitioners submit that the 1st and 2nd Respondents have not complied with Section 206A of the Companies Act, 1956 and processed the physical share certificates into electronic form even after sending the request by the Petitioner.
- e. The Petitioners have relied upon the decision of Hon'ble CLB, Mumbai Bench in the case of Rajender Kumar Gupta and Others V. Reliance Petrochemicals Limited and Others reported in [2011] 103 CLA 226, wherein it was held that the Petitioners are entitled to all the benefits accrued thereon including dividend, bonus shares, etc.
- f. The Petitioners state that except Mr. Anil Maliwal (Respondent No.9) who sent an objection to the Hon'ble CLB, none of the Respondents 3 to 13 came forward or appeared before the Hon'ble Tribunal. Further,



Respondent No. 9 who had objected initially, has transferred his entire 2000 bonus shares along with dividend amount of Rs. 94,700/- in favour of the Petitioner. Also, the 5th Respondent has informed to transfer the Bonus shares held by him along with dividend in favour of Petitioner. All this, according to the Petitioner, only reiterates the genuineness of his claim in their rightful demand of transfer of bonus shares along with dividend.

6. The Learned Counsel for Respondent No. 1& 2, countering the submissions of the Petitioners, made the following submissions:
 - a. According to Respondent No.1 and 2, the Board of the First Respondent Company issued bonus shares in the ratio of two bonus shares of nominal value of Re.1 each for every one share of nominal value of Re.1 held in the company. This issue of Bonus shares to existing members of the company was approved by the Board at its meeting held on 27.12.2007 and by the members at the Extra-Ordinary General Meeting held on 3rd April, 2008. The record date fixed for ascertaining the members eligible to receive bonus shares was 22nd May, 2008. Accordingly, only those members whose names appear in the Register of Members as on the record date alone were eligible to receive the Bonus shares. The Respondent No. 1 and 2 also admit that 2900 shares purchased by the Petitioner stood in the name of R 3 to 13 as on the record date for Bonus shares since the Petitioner did not send the shares for transfer before the aforesaid record date and waited for more than 2 years after that date.
 - b. It is further submitted that Petition is outside the scope of Section 111A and furthermore, the Petitioner has not shown that any transfer of shares has been made in violation of provisions of SEBI or regulations made thereunder or the Sick Industrial Companies (Special Provisions) Act or any other law in force for invoking the provisions of Section 111A(3) of the Act. They also state that the provisions of Section 111A can be invoked only when there is a transfer involved. In the present case, the Petitioner has admitted that the shares they bought from Respondent 3 to 13 have been duly transferred by 1st Respondent. The Respondents have



relied on Hon'ble Supreme Court judgement in Ammonia Supplies Corporation (P) Ltd Vs. Modern Plastic Containers Pvt Ltd and Ors [1998] 94 Comp Cas 310 (SC) which held that rectification is the failure on the part of the company to comply with the directions under the Act and that to show this error, the burden is on the Applicant.

c. It is also the contention of the Respondents that the Petition is filed after inordinate delay, laches and barred by limitation. They submit that the Petitioner having purchased the shares between November 2006 and January 2008, has not satisfactorily explained as to why they slept over the same and not sent the shares for transfer immediately and waited till August 2010 for the same. The Petitioner has failed to explain as to why it remained silent and did not lodge the shares for transfer with the R1 Company at that point in time or atleast intimate the fact that they purchased the said shares to the company. It is a cardinal rule of law that the law assists only those who are vigilant with their rights and not those who slept thereupon. Further, Article 137 of Limitation Act, 1963 clearly lays down a period of three years from the date on which right to apply accrues and in the present case, the record date for Bonus issue was 22nd May, 2008 and the right to apply for the same accrues from that date.

d. The Respondents relied upon two judgments in support of the above contention- Hon'ble Gujarat High Court judgment in Bipin Vadilal Mehta V. Ramesh B Desai [1998] 92 Comp Case 910 (Guj) and Hon'ble Supreme Court decision in The Kerala State Electricity Board, Trivandrum V T.P Kunhaliumma AIR 1977 SC 282

7. It is pertinent to note that during the hearing held on 23.07.2014 at CLB, it was submitted by the Petitioner that the depositories are necessary to be impleaded as Respondents No. 14 & 15 to the petition. The proposed respondent No.14 filed counter and stated that they are not party to the main petition and the applicants filed the present application belatedly for impleading them as respondent. It is stated that the applicants should have approached the civil court to claim ownership of the shares. The proposed respondent No.14 is a depository and facilitates the beneficial owner



(account holder) to hold and transfer securities in an electronic form. Further the beneficial owner avails depository services from a depository participant and the proposed respondent No.14 does not deal with the beneficial owner and account holders. It is further stated that the proposed respondent is likely to face in implementing any order that CLB it passes. The proposed respondent cannot maintain the status quo in respect of 58,000 shares which is the subject matter of this petition on the ground that it is not possible for the proposed respondent to identify as to who is the beneficiary of the transfer that the subject shares may got mixed with shares sold by other sellers on the stock exchange and as these shares are fungible. It is not possible to find out who the transferee is in the respect of shares on which the petitioner is interested. It is stated that in the depository environment if there are multiple transfers of the same shares from one account to another and to various others, the depository cannot keep track of the movement of any specific shares since there are no distinctive numbers to identify the shares. In view of the reasons it is stated that the CA No.193/2012 is liable to be dismissed. In the application it is stated that the bonus shares have been dematerialized and the company has no control over the said shares. It is submitted that the depositories are the ultimate authorities with whom the depository participants are registered with.



8. From the submissions, it was understood that the Petitioner was already holding shares of NMDC Ltd (Respondent No.1 Company) but Petitioner chose not to inform Respondent No.2 regarding misplacing of shares which he bought between 2006-08. Only in the year 2011, Petitioner Company sent shares that too in two tranches to Respondent No.1 Company for sub-division of shares which was carried out by Respondent No.1 Company. However, we are of considered opinion that the claim of Petitioner with respect to entitlement of bonus shares accrued to them towards shares bought in 2006-08 is tenable only if the Petitioner's name was available in the Register of Members as on the record date i.e., 22.05.2008. In the instant case, from the facts, it is clear that the shares

were subdivided and transferred to the Petitioner. Therefore, as per law and practise, since these bonus shares were already dematted in the year 2008 and the bonus shares had already come in to the secondary market for trading, would have changed hands amongst hundreds of investors and the shares may not be available with the Respondents No. 3 to 8 and 10 to 13, since they would have sold their shares in secondary market by creating third party rights. Since, the Respondent No.1 Company is a listed company and the shares are freely tradeable in the platform of stock exchange, the relief sought by the Petitioner viz., to surrender bonus shares by the Respondents to the Petitioner and Respondent No.1 to rectify the register of members and to enter Petitioner Company's name in the place of Respondents is not acceptable and currently not possible.

9. With regard to the reference laid by the Petitioner on Reliance Petrochemicals Limited and Ors (stated supra) which pertains to conversion of debentures and record date fixed by the Company for the purpose of conversion is 21st October, 1991, whereas, apparently, the Company received debentures as on 18th December, 1991. Therefore, the delay appears to be not even two months and moreover, the conversion is for the same debenture-holder becoming shareholder i.e. no third party rights were created. However, the case in hand is where the third part rights were created/ would have created as stated supra. So relying on the above case will not add any weight in the present Petition.



10. Regarding claim of the Petitioner that Respondent No.1 Company has dematerialized some of bonus shares of Respondents, subsequent to the request of Petitioner to transfer bonus shares. From the records, it is observed that Petitioner himself has requested for sub-division of shares and bonus shares only in 2011. Therefore the claim of the Petitioner is actually incorrect.
11. The contention of the Petitioner that he's entitled to all the benefits accrued from the original shares purchased including bonus shares is correct in

normal situation. However, in the present facts of the case, as on the record date for issue of bonus shares, i.e., 22nd May 2008, Petitioner Company was not a registered share holder (its name was not entered in the register of members list). Therefore, Petitioner Company is not entitled for bonus shares and the shareholders whose name is entered in register of members only is legally/rightfully eligible for the bonus shares.

12. The Respondent has rightly submitted that Section 111A refers to only transfer and not for allotment of shares, including bonus shares. Therefore, the relief sought in present case is misplaced.
13. From the records, it is also observed that the Petitioner has not taken effective steps to retrieve misplaced shares bought in 2006-08 i.e., stop transfer notice to R. 1 and 2, filing police complaints, issuing public notice, applying for duplicate share certificates, etc. Also, they have neither intimated Respondent No.1 Company nor sought for duplicate share certificate from Respondent No.1 Company.
14. From the material available, the Bonus Shares was issued by the R1 Company and the bonus shares were already allotted to the Members whose names were entered in the register of members as on the record date fixed by the R1 Company. Therefore, we are of the opinion that the grievance of the petitioner is not against the R1 Company, but against various respondents who were allotted bonus shares since they were the registered members as on the record date and the same is sought to be transferred to the petitioner. Therefore, the main of grievance of the petitioner is against the Respondents no. 3 to 13, except R.9 and not R1 and R2. Though the Registered Office of the R1 Company is situated in Hyderabad, except R.7 other respondents are residing at various States of the Country. The tribunal also noted that only the Respondent No.1, 2 & 7 falls within the jurisdiction of this Tribunal. While the rest of the respondents are outside the purview of this Bench, since they reside in different states in India other than the State of Telangana and State of



Andhra Pradesh. Therefore, we are also of the view that the petitioner has to file necessary petition before the respective Benches of NCLT, depending on the territorial jurisdiction i.e. the place of residence /place of business of the Respondents.

Accordingly, CP No.615/111A/CB/2012 is disposed off. All CAs, if any, pending stand disposed of. No order as to costs.



Sd/-
RAVIKUMAR DURAISAMY
MEMBER (T)

Sd/-
RAJESWARA RAO VITTANALA
MEMBER (J)

V. Annapoorna
V. ANNA POORNA
Asst. DIRECTOR
NCLT, HYDERABAD - 68