

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH, AT HYDERABAD**

**CP No.3/397/HDB/2016**

Date of Order: 24.03.2017

**BETWEEN:**

1. Andhra Pradesh Industrial Development Corporation Limited  
Parishrama Bhavanam,  
P.B. No.1049, Fateh Maidan Road,  
Hyderabad – 500 004

.....Petitioner

AND

1. Neuland Laboratories Limited (“The Company”),  
Sanali Info Park, ‘A’ Block,  
Ground Floor, 8-2-120/113,  
Road No.2, Banjara Hills,  
Hyderabad – 500 034
2. Karvy Computershare Private Limited,  
46, Avenue, 4<sup>th</sup> Street  
Road No.1, Banjara Hills,  
Hyderabad – 500 034.

**CERTIFIED TO BE TRUE COPY  
OF THE ORIGINAL**  
Respondents

Counsel for the Petitioner:

Sh. P. Narendar

Counsel for the Respondent No.1:

Smt. Sarada Bhamidipati

**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 Application was initially filed before the Hon’ble Company Law Board, Chennai Bench, Chennai (CLB). Since the National Company Law Tribunal (NCLT), Hyderabad Bench, has been constituted for the cases pertaining to the States of Andhra Pradesh and Telangana, the case



is transferred to the Hyderabad Bench of NCLT. Hence, we have taken up the case on records of NCLT, Hyderabad Bench and deciding the case.

2. The present Company Petition No.3/397/HDB/2016 has been filed on 07.08.2015 by The Andhra Pradesh Industrial Development Corporation under Sections 81, 111A, 397, 398, 399, 402, 403 read with other applicable Provisions of the Companies Act, 1956 and under Sections 62, 59, 241 & 242 of the Companies Act, 2013, seeking interalia that:

a) APIDC, is a State Government Company which has the public money involved in it and as an investor keeping in view the fact, it was requested to intervene in the matter in accordance with rules under Section 55A, 637A of the Companies Act, 1956;

b) to direct M/s Newland Laboratories Ltd (the Company) allot 20,833 equity shares @ of Rs.45/- (rupees forty five) per share as per the Rights entitlement to the Petitioner at the time of Rights Issue dt.20.03.2012;

c) to direct M/s Neuland Laboratoriles Ltd (the Company), paying the compensation towards the capital appreciation based on the value arised by independent valuer; and

d) to allot the equity shares in proportion to the Right equity shares viz 20,833 equity shares which are made subsequent to the date 20.03.2012 or Bonus issue or Public issue etc., after 20.03.2012.

e) to direct M/s Newland Laboratories Ltd, pay the dividend entitled in proportion on total equity shares till date;

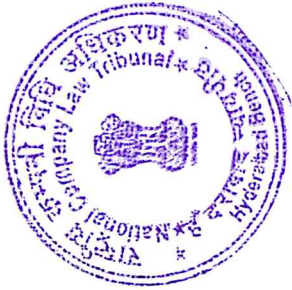
f) to pay the compensation in lieu of losing rights as a shareholder from 20.03.2012 to till date.

3. The facts as mentioned in the Petition which are relevant to the present issue are as follows:

a. The Andhra Pradesh Industrial Development Corporation (APIDC) was incorporated in the State of Andhra Pradesh, as a Company Limited by shares on 16.12.1960, by the erstwhile Government of Andhra Pradesh, for planned development of medium and large scale industries in the State vide CIN U74999TG1960SGC000862.



- b. The authorised Capital of the Corporation is Rs.110,00,00,000/- (Rupees One hundred and ten crores only), consisting of 970000 equity shares of Rs.1000/- (Rupees One Thousand only) each and 1300000, 13% Cumulative Redeemable Preference shares of Rs.100/0 each and the Subscribed and Paid up Capital, is Rs.96,22,89,000/- (Rupees Ninety six crores twenty two lakhs eighty nine thousand only) consisting of 9,62,289 equity shares of Rs.1000/- (Rupees One Thousand only) each as on the date of the petition.
- c. The objects of the APIDC are to promote, improve, establish and develop industries in the State of Andhra Pradesh; to plan, formulate and execute projects for setting up industries or developing lines of production, etc.
- d. The R1 Company came for a public issue in 1994-95 with size 12,65,900 equity shares at Rs. 10/- each at a premium of Rs 35/-. Further the R1 Company went for rights issue for about Rs. 9 crores during 1995-96. The Petitioner Company further invested Rs. 30 lakhs in R1 Company in the month of April, 1996 and FDIS by subscribing to 15,000 shares of Rs. 10/- each at the premium of Rs. 50/- per share.
- e. The difference between the Petitioner and Respondents started when the R1 Company came out with rights issue in April, 2012 in the ratio of 5 shares for every 12 equity shares held by the shareholders as on the record date. The Company vide abridged offer of letter dated 20.03.2012 sent a composite application form offering 20833 equity shares of Rs. 10/- each as rights at a premium of Rs. 35/- per share for 50,000 equity shares held by the Petitioner Company in R1 Company.
- f. In pursuant to the above offer, the APIDC subscribed to the entitlement of 20,83 Rights shares on 16.04.2012 in split Application Form Nos. 600010 to 600030 (21 split forms) issued in lieu of Composite Application Form No. 2668 by issue of cheques for a total sum of Rs. 9,37,485/-. The split Application Forms were submitted to HDFC Bank Limited, Hyderabad and informed about the

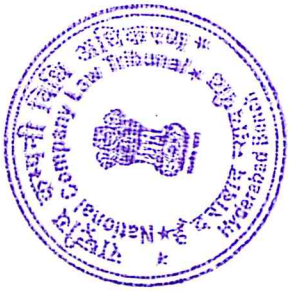


subscription to M/s Karvy Computershare Private Limited, the Registrar to the issue vide letter No. CGM EPM/NLL/4593/2012 dated 17.04.2012.

R1 Company vide allotment advise/ and ECS intimation dated 27.04.2012 refunded the amount of Rs. 9,37,485/- without allotment of the shares and without assigning any reason for the refund.

- g. Subsequent to this, the Petitioner Company requested the 2<sup>nd</sup> Respondent Company to intimate them the reasons for not allotting the above shares. In pursuant to this, 2<sup>nd</sup> Respondent vide letter dated 17.5.2012, informed the Petitioner that the said allotment was rejected on the ground that “Non-Institutional Investor not applying through the ASBA mode of payment in the issue.”
- h. The Petitioner contended that it should be given an opportunity before rejecting the allotment of shares in question.

4. A counter dated 24.11.2016 was filed by R1 Company contravening the submissions of the Petitioner and submitted that the Petitioner at the time of filing of the aforementioned petition by the Petitioner holds only 51,304 equity shares of R1, which is less than 1% of the total paid up share capital of R1 and therefore, in terms of Section 399 of the Companies Act, 1956, is not entitled to make an application under Section 397 and 398 of the Companies Act, 1956.
5. The R1 Company also filed CA No. 55 of 2016 under Rule 3(3) of the NCLT Rules, 2016 and submitted that the petition is ought to be dismissed for lack of proper jurisdiction since Section 55A of the Companies Act, 1956, explicitly mentions that any disputes under Sections 55 to 58, 59 to 84, 108, 109, 110, 112, 113, 116, 117, 118, 119, 120, 121, 122, 206, 206A and 207, so far as they relate to issue and transfer of securities and non-payment of dividend in case of a listed company, the power lies with SEBI. In addition, it is also stated that the present petition is barred by laches and limitation as the same is filed after a lapse of prescribed time of limitation of three years.



6. The petitioner has issued 21 cheques, dated 13.04.2012 for its entitlement of 20,833 equity shares in the rights issue. The petitioner has not submitted its application in accordance with the instructions as regards to the mode of payment towards the Rights Issue as stipulated by SEBI. The Petitioner was also informed that its applications were rejected since it did not make application through the mandatory ASBA mode as directed by SEBI vide Circular dated 29.04.2011. ASBA is a Simple, Safe and Smart way of application wherein the money will be blocked from the Applicant's bank account and the money will be debited only to the extent of allotment received, which eliminates transfer of funds/refund of cheques/delay in refund/misplacing of instrument/loss in transit, etc. Further during this period, even when the money is blocked, the interest will accrue in the bank account of the applicant.
7. The Petitioner at the time of filing the above said petition holds only 51,304 equity shares of R1 Company which is less than 1% of the total paid up share capital of the R1 Company and therefore in terms of Section 399 of the Companies Act, 1956, the Petitioner is not entitled to apply under section 397 and 398 of the Companies Act, 1956 and Section 241 and 242 of the Companies Act, 2013.
8. Since the R1 is a listed company and in terms of section 55(A) of the Companies Act 1956, the provisions with respect to issuance of securities under Section 81 of the Companies Act, 1956 shall be administered by the Securities and Exchange Board of India.
9. Further, Section 111A deals with rectification of register on transfer and it is submitted that the subject matter of the petition is not related in any manner to transfer of shares of the Respondent No.1 Company.

Further the R1 also submitted that section 111A (3), in the case of listed company, it is the SEBI who is administrative authority with respect to provisions under section 111A. This submission of R1 is incorrect since, entire Section 111 of the Companies Act, 1956 is not delegated to SEBI as per Section 55A of the Companies Act, 1956 and therefore not administered by SEBI.



The R1 Company also submitted that the petition filed on 14.08.2015 which was after the expiry of three years limitation period specified under the provisions of the Limitation Act, 1963.

10. The Petitioner also received its entire share application money as refund on 27.04.2012, itself. The Petitioner has filed the present case inspite of receipt of its application money by way of refund.

11. The Petitioner also had taken up his grievance rightly with SEBI Complaint Redressal System (SCORES) on 12.06.2012 and the case was disposed of on 28.06.2013.

12. The Petitioner was refunded its entire share application money and rightly taken up the issue with SEBI and SEBI after accepting submissions of the Respondents disposed of the matter in the year 2013 itself. We are inclined to accept the submissions of the R1 Company especially that:

- a. the Petition is filed beyond three years and thus, the Limitation Act would apply;
- b. the present grievance is not with regard to transfer of shares under Section 111A of the Companies Act, 1956 as contended.
- c. Since the Petitioner holds less than 1% shares of R1 Company, they do not fulfil the eligibility criteria as per Section 399 of the Companies Act, 1956. Therefore, the reliefs sought under Section 397/398 of the Companies Act, 1956 is not maintainable.

In the above facts and circumstances of the case, the CP No.3/397/HDB/2016 is dismissed. All CAs, if any, 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

