

DOMINION ASIAN EQUITIES, INC. (NOW BELLE CORPORATION), PETITIONER, VS. CIPRIANO AZADA, RESPONDENT.

Ponente: BARRIOS, J.

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BARRIOS, J.:

This Petition for Review under Rule 43 of the Revised Rules of Civil Procedure was filed by Dominion Asian Equities, Inc. (or hereafter Dominion Asian) assailing the Decision of the Securities and Exchange Commission (or SEC) in SEC Case No. 01-95-4960, favorable to the respondent Cipriano Azada (or Azada).

These are the antecedents of the case: Dominion Asian is a domestic corporation organized and existing under Philippine laws, and was formerly known as Colossal Mining and Exploration Corporation and now as Belle Corporation. One of the stockholders of Dominion Asian is Azada who owns 100,000 fully paid shares under Stock Certificate No. 3156. On August 23, 1974, Azada exercised his pre-emptive right under Subscription Agreement No. 1471 to subscribe to 200,000 shares of stock of Dominion Asian at P0.0125 per share or a total amount of P2,500.00. Azada paid P625.00 leaving a balance of P1,875.00 which was payable upon call by the Board of Directors.

On May 17, 1994, the Board of Directors approved a Resolution calling for the payment of all unpaid subscriptions not later than June 30, 1994. On June 24, 1994, Dominion Asian caused the issuance of a Notice of Call on all unpaid subscriptions and sent this by registered mail to all stockholders, including Azada. However, the notice sent to Azada was returned undelivered to Dominion Asian due to insufficient address.

On August 8, 1994, the Board of Directors after being informed that a total of 209,562,392 shares of stock remained unpaid as of August 1, 1994, declared these delinquent. A Resolution was then approved by the Board of Directors calling for the disposal of the shares in a delinquency sale to be held on September 9, 1994 at the Office of the Corporate Secretary. Dominion Asian thereafter caused the publication of the Notice of Delinquency Sale in the August 31 and September 7, 1994 issues of the newspaper Malaya.

The delinquency sale was conducted as scheduled on September 9, 1994, and among those included in the sale were the shares of stocks of Azada under Subscription Agreement No. 1471 the balance of which he failed to pay within the period provided in the Notice of Call. Then on November 25, 1994, Azada sent to Dominion Asian a manager's check in the amount of P1,875.00 as full payment of his said balance, attaching a letter advising of his change of address. The check was immediately returned by Dominion Asian with the explanation that the shares of stock covered by Subscription Agreement No. 1471 were previously declared delinquent by the Board of Directors and already sold on September 9, 1994.

Azada again wrote to Dominion Asian on January 4, 1995 informing that he would like to subscribe to an additional 3,200,000 shares in accordance with his pre-emptive right at the rate of an additional sixteen (16) shares for every share held as provided in its Rights Offering, and enclosed a manager's check representing 25% of the subscription price of the 3,200,000 shares. Dominion Asian however returned the check to Azada explaining that he was not entitled to participate on the Rights Offering because his shares under Subscription

Agreement No. 1471 had already been sold in a delinquency sale.

Consequently, Azada filed a petition to annul the delinquency sale of his shares of stocks conducted on September 9, 1994. He claimed that no Notice of Call was served upon him and the delinquency sale was conducted in violation of the provisions of the Corporation Code. He also contended that the price at which the delinquent shares were sold was grossly inadequate.

On December 26, 2000, the SEC rendered the assailed Decision, the decretal portion of which reads:

WHEREFORE, premises considered, the delinquency sale made by the respondent on 9 September 1994 is hereby declared null and void.

The respondent is Ordered:

- a) to accept the petitioner's payment for the unpaid balance and the accrued interest on his Subscription Agreement No. 1471, and to issue to him the certificate for the 200,000 shares under the said subscription agreement;
- b) to give due course to the petitioner's subscription to 3,200,000 shares of the respondent corporation and accept the amount of P8,000.00 payment for the 25% of the said subscription; and
- c) to pay the costs of suit.

SO ORDERED. (pp. 33-34, rollo)

The Motion for Reconsideration filed by Dominion Asian was defeated in the Order dated July 6, 2001.

Hence, this petition where in asking for its grant Dominion Asian contends that:

- THE SEC ERRED IN FINDING THAT THE NOTICE OF CALL SENT BY PETITIONER TO RESPONDENT VIOLATED SEC. 67 OF THE CORPORATION CODE;
- THE SEC ERRED IN FINDING THAT THE RESOLUTION ORDERING THE SALE OF DELINQUENT STOCKS VIOLATED SEC. 68 OF THE CORPORATION CODE;
- THE SEC ERRED IN FINDING THAT THE NOTICE OF SALE VIOLATED SEC. 68 OF THE CORPORATION CODE;
- THE SEC ERRED IN FINDING THAT THE MEETING OF THE BOARD HELD ON 8 AUGUST 1994 LACKS THE REQUIRED QUORUM AS PROVIDED UNDER SEC. 25 OF THE CORPORATION CODE;
- THE SEC ERRED IN FINDING THAT THE PUBLIC AUCTION PRICE WAS GROSSLY INADEQUATE;
- THE SEC ERRED IN HOLDING THAT THE DELINQUENCY SALE OF RESPONDENT'S SHARES OF STOCKS WITH PETITIONER TO BE NULL AND VOID;
- THE SEC ERRED IN GIVING DUE COURSE TO RESPONDENT'S SUBSCRIPTION TO 3,200,000 SHARES OF PETITIONER AND IN ORDERING PETITIONER TO ACCEPT THE AMOUNT OF P8,000 PAYMENT FOR 25% OF SAID SUBSCRIPTION;
- THE SEC ERRED IN IGNORING THE IRREFUTABLE FACT THAT THE CURRENT PAR VALUE, AS A RESULT OF THE MERGER, BECAME P1.00 PER SHARE, AND THEREFORE, THE SEC ERRED IN NOT RULING THAT PER CURRENT PAR VALUE, RESPONDENT SHOULD BE ENTITLED TO ONLY 2,500 SHARES ON HIS INITIAL SUBSCRIPTION AND 32,000 SHARES ON THE ADDITIONAL SUBSCRIPTION, ASSUMING THAT THE PUBLIC SALE WAS A NULLITY. (pp. 13-14, rollo)

In the first assigned error, Dominion Asian maintains that the SEC erred in finding that the Notice of Call violated Sec. 67 of the Corporation Code because it was not sent to the stockholders thirty (30) days before the deadline for payment of the unpaid subscription. This is because Sec. 67 of the Corporation Code provides that the unpaid subscription must be paid on a fixed date and if no payment is made within thirty (30) days from the deadline, then the delinquent shares can be sold at public auction. The thirty-day period provided in Section 67 of the Corporation Code is not a prior notice requirement as erroneously ruled by the SEC, but a grace period after the deadline for payment.

Dominion Asian is correct. The Notice of Call was validly issued, for Sec. 67 of the Corporation Code provides that:

Sec. 67. Payment of balance of subscription. -

x x x Payment of any unpaid subscription or any percentage thereof, together with the interest accrued, if any, shall be made on the date stated in the call made by the board. Failure to pay on such date shall render the entire balance due and payable and shall make the stockholder liable for interest at the legal rate on such balance unless a different rate of interest is provided in the by-laws, computed from such date until full payment. If within thirty (30) days from the said date no payment is made, all stocks covered by said subscription shall thereupon become delinquent and shall be subject to sale as hereinafter provided, unless the board of directors orders otherwise. (emphasis supplied)

So it clearly provides that the failure to pay any unpaid subscription when due shall render the entire balance payable, with legal interest thereon or at the rate of interest provided in the by-laws. The shares shall then become delinquent and will be subjected to sale if still no payment is made within thirty (30) days from the deadline. Hence, the thirty-day period does not refer to the period between the sending of the Notice of Call to the subscribers and the date when payment should be made, as erroneously held by the SEC.

As to the second up to the sixth assigned errors, We find that the SEC correctly made these findings and conclusions that:

On the declaration of delinquent subscription, the minutes of meeting of the board of directors (Exhibit "12") shows that the same was held on 8 August 1994 and signed by the corporate secretary and attested by six (6) directors. However the amended articles of incorporation shows that the number of directors have been increased to fifteen (15) members. This amendment became effective upon the approval of the SEC on 5 August 1994 (Exhibit "Q-1"). Hence the meeting of the board held on 8 August 1994 lacks the required quorum of eight (8) members of the board as provided for under Sec. 25 of the CCP.

Moreover, a perusal of the aforementioned minutes of the board held on 8 August 1994, shows that the resolution ordering the sale of delinquent stocks fails to "specifically state the amount due on each subscription" as required by Sec. 68 of CCP. Furthermore, the Notice of Sale (letter of respondent dated 12 August 1994) marked as Exhibit "4" does not show any enclosure of a copy of the resolution; thus a violation of Sec. 68 of CCP, which is quoted hereunder to wit:

"Sec. 68. Delinquency sale. - the board of directors may be (sic) resolution, order the sale of delinquent stock and shall specifically state the amount due on each subscription plus accrued interest, and the state (sic), time and place of the sale which shall not be less than thirty (30) days nor more than sixty (60) days from the date the stock become delinquent.

Notice of said sale, with a copy of the resolution, shall be sent to every stockholder either personally or by registered mail. The same shall furthermore be published once a week for two (2) consecutive weeks in a newspaper of genera (sic) circulation in the province or city where the principal office of the corporation is located." (Underscoring Ours)

Accordingly the Notice of Delinquency Sale as published in the newspaper (Malaya) on August 31 and September 7, 1994 also failed to specifically state the amount due on each subscription.

Still on the Notice of Delinquency Sale, the former corporate name, Colossal Mining and Exploration Corporation, should have been indicated immediately below the new name as shown in the certificate of amended articles of incorporation (Exhibit "8"), considering that the change of name was just recently approved on 5 August 1994. Such style of presentation does not "catch the eyes" of the delinquent subscribers. Thus, such published notice resulted to 166 subscribers declared delinquent (Exhibit "11") subscribing 201,388,720 shares at issue value of P2,016,250.46 out of 261,629,242 shares at the issue value of P2,616,292.42 before the publication (Exhibit "C"). Hence it could be concluded that the effective rate of reducing the number of delinquent shares is so minimal at 23% only.

This Commission hereby takes judicial notice that the price per share of the corporation is traded between P0.27 and P0.28 at the Philippine Stock Exchange (Exhibits "K" and "K-1"). It is unbelievable that the price differential between the bidding or public auction of delinquent shares and trading in the stock exchange is so wide. It is obvious therefore that the price of P0.010012 per share is grossly inadequate.

It could be concluded therefore that the whole process of delinquency sale of the respondent is confiscatory, arbitrary and prejudicial to the investing public. As such, the same is violative of long standing principle in civil law that says "no one shall enrich himself at the expense of another." (pp. 32-33, rollo)

This determination by the SEC, an administrative government agency tasked to implement a statute, is accorded great respect and ordinarily controls the construction of the courts. Settled is the rule that the courts will not interfere in matters which are addressed to the sound discretion of government agencies entrusted with the regulation of activities coming under the special technical knowledge and training of such agencies (Hydro Resources Contractors Corporation vs. National Irrigation Administration, 441 SCRA 614). In this, We find no cause to deviate from the general rule.

Anent the seventh and eight assigned errors, Dominion Asian points out that the SEC erred in giving due course to Azada's subscription to 3,200,000 shares and in ordering it to accept the amount of P8,000.00 as payment for 25% of the said subscription. It further contends that with the merger of Dominion Asian and Belle Corporation on August 15, 1996, the current value of the shares of Dominion Asian was increased from P0.01 to P1.00. With the said increase in the current par value, it is claimed that Azada is entitled to only 2,000 shares and not 200,000 shares under Subscription Agreement No. 1471, and another 32,000 shares and not 3,200,000 shares on the additional subscription. Or in the alternative, Azada is entitled to 200,000 shares under Subscription Agreement No. 1471 and another 3,200,000 shares by virtue of his preemptive right but at P1.00 per share.

It is notable however that sometime before January 4, 1995, Dominion Asian gave its stockholders the pre-emptive right to subscribe to an additional sixteen (16) shares for every share held at par value of P0.01 per share. Since the delinquency sale of the 200,000 shares of Azada was null and void, it follows then that Azada has the right to subscribe to an additional 3,200,000 shares at P0.01 per share according to the Rights Offering. It would be unfair to hold that Azada is entitled to 3,200,000 shares at the current par value of P1.00 per share when at the time he wanted to exercise his preemptive right, the par value was then at P0.01 per share and the corporation unjustly denied him the right to subscribe to additional shares. Hence, the SEC did not err in allowing Azada to subscribe to 3,200,000 shares and in ordering Dominion to accept the amount of P8,000.00 as payment for 25% of the said subscription.

WHEREFORE, the petition is DENIED DUE COURSE and DISMISSED.

SO ORDERED.

Guariña III and Romilla-Lontok, JJ., concur.

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