

**UNION BANK OF THE PHILIPPINES, PETITIONER, VS. THE  
HONORABLE COURT OF APPEALS, COMMISSIONER FE ELOISA C.  
GLORIA, ATTY. MANOLITO SOLLER, IN THEIR CAPACITY AS  
CHAIRPERSON AND MEMB...**

*G.R. No. 131729. May 19, 1998*

Ponente: ROMERO, J.

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**ROMERO, J.:**

It has been about a year since the Thai baht plummeted to a record low and sparked the downspin of most of Asia's other currencies including our very own peso. The Philippines has not suffered as much from the full impact of the region's worst financial turmoil when most neighboring economies are still sluggishly inching their way towards recovery. Tested economic initiatives often hailed for helping save the country from losing its hard-earned gains cannot hide the fact that some businesses are still going downhill in light of serious liquidity problems resulting from said crisis. Private respondents' present predicament is one such example and from which they now intend to free themselves.

The road to recovery seems elusive though. Private respondent's bid to salvage their collapsing business by seeking suspension of payments – a statutory device allowing distressed debtors to defer payment of their debts – now faces a major hindrance as petitioner challenges their recourse to said remedy.

The records disclose the following antecedent facts:

On September 16, 1997, private respondents EYCO Group of Companies ("EYCO"),<sup>[1]</sup> Eulogio O. Yutingco, Caroline Yutingco-Yao, and Theresa T. Lao (the "Yutingcos"), all of whom are controlling stockholders of the aforementioned corporations, jointly filed with the SEC a Petition for the Declaration of Suspension of Payment[s], Formation and Appointment of Rehabilitation Receiver/Committee, Approval of Rehabilitation Plan with Alternative Prayer for Liquidation and Dissolution of Corporations<sup>[2]</sup> alleging, among other things, that, "the present combined financial condition of the petitioners clearly indicates that their assets are more than enough to pay off the credits" but that due to "factors beyond control and anticipation of the management xxx the inability of the EYCO Group of Companies to meet the obligations as they fall due on the schedule agreed with the [creditors] has now become a stark reality."<sup>[3]</sup> In a footnote to said petition<sup>[4]</sup> the Yutingcos justified their inclusion as co-petitioners before the SEC on the ground that they had personally bound themselves to EYCO's creditor under a J.S.S. Clause (Joint Several Solidary Guaranty).

Upon finding the above petition to be sufficient in form and substance, the SEC Hearing Panel then composed of Manolito S. Soller, George P. Palmares and Rommel G. Olivia issued an order<sup>[5]</sup> dated September 19, 1997 setting its hearing on October 22, 1997. At the same time, said panel also directed the suspension of all actions, claims and proceedings against private respondents pending before any court, tribunal, office, board and/or commission.

Meanwhile, some of private respondents' creditor, composed mainly of twenty-two (22) domestic banks (the "consortium")<sup>[6]</sup> including herein petitioner Union Bank of the Philippines,<sup>[7]</sup> also convened on September 19, 1997 for the purpose of deciding their options in the event that private respondents invoke the provisions of Presidential Decree No. 902-A, as amended. The minutes<sup>[8]</sup> embodying the terms agreed upon by the consortium in said meeting provided, inter alia, for the following:

"... In response to this, the following were actions agreed upon by all the creditor banks present:

- Hire a lawyer to advise the banks on the legal matters of suspension of payments. Atty. Balgos was engaged to be the legal counsel.
- Form a management committee to represent all the creditor banks. This will be composed of the first seven banks with the highest exposures, namely:

Philippine National Bank  
Far East Bank and Trust Co.  
Traders Royal Bank  
Allied Banking Corporation  
Philippine Commercial and International Bank  
Bank of Commerce  
Westmont Bank

The other creditor Banks will be informed as often as needed."

Without notifying the members of the consortium, petitioner, however, decided to break away from the group by suing private respondents in the regular courts. These cases are:

Civil Case No. 97-2184 (Union Bank of the Philippines v. Nikon Industrial Corporation, et al.) for Sum of Money with Application for Preliminary Attachment filed before the Regional Trial Court of Makati, Branch 148, on September 23, 1997;<sup>[9]</sup>

Civil Case No. 5360-V-97 (Union Bank of the Philippines v. Eulogio and Bee Kuan Yutingco, et al.) for Annulment, Rescission of Titles/Injunction with prayer for Issuance of Preliminary Mandatory Injunction filed before the Regional Trial Court of Valenzuela, Branch 172, on September 24, 1997;<sup>[10]</sup>

Civil Case No. 66477 (Union Bank of the Philippines v. Eulogio and Bee Kuan Yutingco, et al.) for Annulment, Rescission of Titles/Injunction with prayer for Issuance of Preliminary Mandatory Injunction filed before the Regional Trial Court of Pasig City, Branch 157, on September 26, 1997;

Civil Case No. 66479 (Union Bank of the Philippines v. Eulogio and Bee Kuan Yutingco, et al.) for Annulment, Rescission of Titles/Injunction with Prayer for Issuance of Preliminary Mandatory Injunction filed before the Regional Trial Court of Pasig City, Branch 159, on September 24, 1997; and

Civil Case No. 66478 (Union Bank of the Philippines v. Eulogio and Bee Kuan Yutingco, and Enrique Yao) for Annulment, Rescission of Titles/Injunction with prayer for Issuance of Preliminary Mandatory Injunction filed before the Regional Trial Court of Pasig City, Branch 158, on September 25, 1997.

In the meantime, the SEC issued an order<sup>[11]</sup> on October 3, 1997, appointing (a) Amelia B. Cabal of SGV & Co., as common representative; (b) Inoncencio Deza, Jr., of the Philippine National Bank as representative of the creditor-banks; and (c) Atty. Florencio B. Orendain as representative of the EYCO Group and the Yutingcos, to act collectively as interim receivers of the distressed corporations.

Aside from commencing suits in the regular courts, petitioner also vehemently opposed private respondents'

petition for suspension of payments in the SEC by filing a Motion to Dismiss on October 22, 1997.[12] It contended that the SEC was bereft of jurisdiction over such petition on the ground that the inclusion of the Yutengcos in the petition “cannot be allowed since the authority and power of the Commission under the (sic) virtue of [the] law applies only to corporations, partnership[s] and other forms of associations, and not to individual petitioners who are not clearly covered by P.D. 902-A as amended”. According to petitioner, what should have been applied instead was the provision on suspension of payments under Act No. 1956, otherwise known as the “Insolvency Law,” which mandated the filing of the petition in the Regional Trial Court and not in the SEC. Finally, petitioner disputed private respondents’ recourse to suspension of payments alleging that the latter prejudiced their creditors by fraudulently disposing of corporate properties within the 30-day period prior to the filing of such petition.

Subsequently, a creditor’s meeting was again convened pursuant to SEC’s earlier order dated September 19, 1997, wherein the matter of creating a management committee (the “Mancom”) was submitted for resolution. Apparently, only petitioner opposed the creation of said Mancom as it filed earlier with the SEC its Motion to Dismiss.

The SEC Hearing Panel composed of Hon. Fe Eloisa C. Gloria and Manolito S. Soller subsequently issued an Omnibus Order[13] on October 27, 1997, directing this time the creation of the Mancom consisting of seven (7) members; four (4) of whom shall come from the creditor banks, one (1) from the non-bank creditors, one (1) from the petitioners and one (1) to be appointed by the SEC. Moreover, the panel likewise granted an earlier Urgent Motion for Reconsideration filed by creditor banks which sought to annulate the September 19, 1997 suspension order on the titles of the properties of the private respondent corporations. In issuing said order, the panel resolved that the interest of private respondents and their creditors could be best served if such Mancom is created. It is noteworthy, however, that this directive expressly stated that the same was without prejudice to the resolution of petitioner’s Motion to Dismiss whose scheduled hearing was set by petitioner itself on October 29, 1997

Aggrieved, petitioner immediately took recourse to the Court of Appeals on October 29, 1997 by filing therewith a Petition for Certiorari with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction[14] under Rule 65 of the 1997 Rules of Civil Procedure. It imputed grave abuse of discretion on the part of the SEC Hearing Panel in precipitately issuing the suspension order dated September 19, 1997 and in prematurely directing the creation of the Mancom prior to the scheduled hearing of its Motion to Dismiss on October 29, 1997. Petitioner lamented that these actions of the panel deprived it of due process by effectively rendering moot and academic its Motion to Dismiss which allegedly presented a prejudicial question to the propriety of creating a Mancom. Furthermore, it insisted that jurisdiction over private respondents’ petition properly pertained to the Regional Trial Courts under Act No. 1956 and that, in any event, private respondents were not entitled to suspension of payments since they had already committed fraudulent dispositions of their properties.

Without giving due course to Union Bank’s petition, the appellate court issued a resolution[15] on October 31, 1997 directing private respondents to submit their comment on the petition while temporarily restraining the SEC from appointing the members of Mancom, annotating the suspension orders on the titles of the properties of private respondents, and taking further proceedings with regard to the suspension of payments and/or rehabilitation.

Meanwhile, members of so-called steering committee of the consortium composed of the Philippine National Bank, Far East Bank and Trust Company, Allied Bank, Traders Royal Bank, Philippine Commercial International Bank, Bank of Commerce, and Westmont Bank (the “Intervenors”) filed with the appellate court an Urgent Motion for Intervention[16] and a Consolidated Intervention and Counter-Motion for Contempt and for the

Imposition of Disciplinary Measures Against Petitioner's Counsel[17] both dated November 3, 1997 claiming that they were not impleaded at all by petitioner in its petition before the appellate court when in fact they had actual, material, direct and legal interest in the outcome of said case as owners of at least eighty-five percent (85%) of private respondents' obligations. Moreover, they opposed said petition because of petitioner's ostensible failure to exhaust administrative remedies in the consortium and in the SEC and for being guilty of forum-shopping in the appellate court as its Motion to Dismiss in the SEC was yet to be resolved at the time.

Petitioner, however, countered intervenors' motion in its Opposition to Urgent Motion for Intervention and Reply to the Comment-in-Intervention,[18] vehemently challenging the existence of a consortium, its membership therein, the intervenors' ownership of at least eighty-five percent (85%) of private respondents' obligations and their due representation of the twenty-two (22) creditor banks, the existence of an agreement drawn up during the September 19, 1997 meeting regarding the satisfaction of the individual exposures of the creditor banks, and its consent to the creation of the Mancom. It also denied intervenors' accusation of forum-shopping and non-exhaustion of administrative remedies on the ground that it was acting with a sense of urgency, the Hearing Panel having already created the Mancom and was about to appoint the members thereof at the same time.

After several exchanges of pleadings between the parties, the Court of Appeals First Division finally rendered its assailed decision[19] on December 22, 1997, granting intervention of the seven (7) creditor banks named above while dismissing the petition for failure to exhaust administrative remedies and forum-shopping. Nothing in the said decision, however, indicates that the appellate court squarely confronted the issue of jurisdiction raised earlier by petitioner.

Without moving for reconsideration of the appellate court's decision, petitioner elevated the said matter to this Court through a Petition for Certiorari with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction[20] filed on December 29 1997. Petitioner, however, seasonably amended[21] the same on January 5, 1998.

Upon being notified by petitioner that the SEC Hearing Panel had already appointed members of the proposed Mancom on January 5, 1998,[22] this Court issued a resolution[23] on January 6, 1998, granting the temporary restraining order (TRO) prayed for in the petition and requiring all the respondents to comment thereon.

Both EYCO and the Yutingcos duly filed their Comment[24] on January 14, 1998 asking the Court to cite petitioner and its counsel for contempt because of deliberate forum shopping, assailing the propriety of the temporary restraining order which we issued, and arguing that Union Bank's petition should be dismissed outright for (1) categorizing it as having been filed both under Rule 45 and Rule 65 of the 1997 Rules of Civil Procedure; (2) failing to move for reconsideration before the Court of Appeals; (3) failing to implead indispensable parties; (4) raising factual allegations of fraud; (5) forum shopping; and (6) failing to exhaust administrative remedies.

On January 27, 1998, the intervenors before the appellate court also came to as through an Urgent Manifestation,[25] seeking the outright dismissal of the petition on grounds of forum-shopping and failure to implead them as indispensable parties which allegedly violated Section 4, Rule 45 of the 1997 Rules of Civil Procedure requiring that the petition should "state the name of the appealing party as the petitioner and the adverse party as respondent."

For their part, the interim receivers who are also impleaded as private respondents in the instant petition, filed their own Comment[26] on January 30, 1998, likewise contending that petitioner failed to exhaust administrative remedies when it leap-frogged to the Court of Appeals and that, in any case, the SEC had jurisdiction to entertain private respondents' petition for suspension of payments.

In response to the respective comments of private respondents and interim receivers, petitioner filed its Consolidated Reply and Opposition[27] on February 5, 1998, reiterating its earlier position that (1) the SEC had no jurisdiction to entertain private respondents' petition for suspension of payments; (2) private respondents are already bankrupt because of the alleged fraudulent disposition they have made and hence, are no longer entitled to the remedy of suspension of payments; (3) prior motion for reconsideration is not indispensable when, as in this case, there is an actual threat that the Mancom members would soon be appointed; (4) intervenors are not indispensable parties; and (5) there is no forum-shopping.

Complaining that daily interests on its outstanding debts continue mounting by the millions and that the work of SEC-appointed interim receivers has been paralyzed for quite some time, private respondents filed an Urgent Motion[28] on February 12, 1998 praying that the temporary restraining order be lifted for the preservation of their assets and to pave the way for rehabilitation. They likewise asked, among other things, that their motion to cite petitioner and its counsel for contempt be immediately resolved.

Petitioner, in turn, filed a Motion to Cite Yutingcos and Their Counsel in Contempt[29] for allegedly misleading this Court in stating that Union Bank failed to pay the required deposit for costs, that they were not served a copy of the Amended Petition, and that they never nominated Sycip, Gorres, Velayo & Co. (the "SGV") is rehabilitation receiver.

As may be gleaned from the above factual account, there are only two basic and outstanding issues in the instant case which require our resolution, namely:

- (1) Whether the SEC can validly acquire jurisdiction over a petition for suspension of payments filed pursuant to Section 5(d) of P.D. No. 902 – A, as amended, when such petition joins as co-petitioners the petitioning corporate entities AND individual stockholders thereof; and
- (2) Whether petitioner engaged in forum-shopping and failed to exhaust administrative remedies in taking direct recourse to the Court of Appeals to challenge the assumption of jurisdiction by the SEC Hearing panel over private respondents' petition for suspension of payments.

We shall discuss this issues seriatim.

#### I. Jurisdiction of the Securities and Exchange Commission.

It is already a well-settled jurisprudential precept that jurisdiction over a subject matter is conferred by law.[30] In this regard, the pertinent provision of law conferring jurisdiction upon the SEC over petitions for suspension of payments such as the one filed earlier by private respondents provides:

"SEC. 5. In addition to the regulatory and adjudicative functions of the Securities and Exchange Commission over corporations, partnerships and other forms of association registered with it as expressly granted under existing law and decrees, it shall have original and exclusive jurisdiction to hear and decide cases involving.

x x x

x x x

x x x

(a) Petitions of corporations, partnerships or associations to be declared in the state of suspension of payments in cases where the corporation, partnership or association possesses sufficient property to cover all its debts but foresees the impossibility of meeting them when they respectively fall due or in case where the corporation, partnership or association has no sufficient assets to cover its liabilities, but is under the management of a Rehabilitation Receiver or Management Committee created pursuant to this Decree. (As added by P.D. No.

1758).”

As state earlier, it is precisely on the basis of above provision that petitioner now avers that the SEC cannot validly entertain private respondents’ petition for suspension of payments. Its reason is that the law vesting jurisdiction upon the SEC to hear petitions of this kind limits itself to petitions filed only by corporations, partnerships or associations. Petitioner thus asserts that the petition filed by private respondents with the SEC should have been dismissed because it was not such a kind of petition filed solely by corporations when it impleaded as co-petitioners the Yutingcos who are individual persons upon whom said body cannot acquire jurisdiction.

We fully agree with petitioner in contending that the SEC’s jurisdiction on matters of suspension of payments is confined only to those initiated by corporations, partnerships or associations. Actually, this is not the first time that the Court has encountered an issue as the one at bar. It has made a similar pronouncement in the seminal case of *Chung Ka Bio v. Intermediate Appellate Court, et al.*,<sup>[31]</sup> likewise involving a petition for suspension of payments filed by a corporate entity and an individual stockholder, where we ruled that:

“This section [referring to Section 5 (d) of P.D. No. 902-A, as amended] clearly does not allow a mere individual to file the petition which is limited to ‘corporations, partnerships or associations.’ Administrative agencies like the SEC are tribunals of limited jurisdiction and, as such, can exercise only those powers which are specifically granted to them by their enabling statutes. Consequently, where no authority is granted to hear petitions of individuals for suspension of payments, such petitions are beyond the competence of the SEC. x x x.

The circumstance that Ching is a co-signer in the corporation’s promissory notes, collateral or guarantee or security agreements, does not make him a proper party. Jurisdiction over the subject matter must exist as a matter of law and cannot be fixed by agreement of the parties, acquired through, or waived, enlarged or diminished by, any act or omission; neither can it be conferred by acquiescence of the tribunal. Hence, *Alfredo Ching*, as a mere individual, cannot be allowed as a co-petitioner in SEC Case No. 2250.” [Underscoring supplied]

This Court reinforced further the above dictum in *Traders Royal Bank v. Court of Appeals, et al.*,<sup>[32]</sup> a sequel to *Chung Ka Bio*, where we declared:

“Although Ching was impleaded in SEC Case No. 2250, as a co-petitioner of PBM [Philippine Blooming Mills], the SEC could not assume jurisdiction over his person and properties. The Securities and Exchange Commission was empowered, as rehabilitation receiver, to take custody and control of the assets and properties of PBM only not over private individuals, except stockholders in an intra-corporate dispute (Sec. 5, P.D. 902-A and Sec. 2 of P.D. 1758). Being a nominal party in SEC Case No. 2250, Ching’s properties were not included in the rehabilitation receivership that the SEC constituted to take custody of PBM’s assets. Therefore, the petitioner bank was not barred from filing a suit against Ching, as a surety for PBM. An anomalous situation would arise if individual sureties for debtor corporations may escape liability by simply co-filing with the corporation a petition for suspension of payments in the SEC whose jurisdiction is limited only to corporations and their corporate assets.” [Underscoring supplied]

Very recently, we reiterated said pronouncements in *Modern Paper Products, Inc. et al., v. Court of Appeals, et al.*,<sup>[33]</sup> viz.:

“The Court of Appeal was correct in concluding that the SEC lacked or exceeded its jurisdiction when it included the Co spouses under a state of suspension of payments together with MPPI. x x x

It is axiomatic that jurisdiction is conferred by the Constitution or by law. It is indubitably clear from the aforementioned Section 5 (d) that only corporations, partnerships, and associations --- NOT private individuals ---

can file with the SEC petitions to be declared in a state of suspension of payments. It logically follows that the SEC does not have jurisdiction to entertain petitions for suspension of payments filed by parties other than corporations, partnerships or associations. x x x” [Underscoring supplied].

Notwithstanding the foregoing conclusions, this Court, however, does not subscribe to the theory espoused by petitioner that the case filed by private respondents should be dismissed outright in its entirety. The reason is that while it is true that the SEC cannot acquire jurisdiction over an individual filing a petition for suspension of payments together with a corporate entity, a closer scrutiny of Chung Ka Bio and MPPI does not in any manner suggest, even tangentially, that a petition as the one at bar must be dismissed likewise with respect to the corporate co-petitioner. What Chung Ka Bio and MPPI respectively declared was that “Alfredo Ching, as a mere individual, cannot be allowed as a co-petitioner in SEC Case No. 2250” and “respondent Court of Appeals was correct in ordering the dismissal of the petition for suspension of payments insofar as the Co spouses were concerned.” [Underscoring supplied]

That the Court never dismissed a petition for suspension of payments as the cases involved in Chung Ka Bio and MPPI is not without legal basis. The reason is to be found in Section 1, Rule XXIII of the REVISED RULES OF PROCEDURE IN THE SECURITIES AND EXCHANGE COMMISSION (As amended on April 25, 1993) which was promulgated pursuant to the rule-making powers vested in the SEC by P.D. No. 902-A, as amended. It states:

“SECTION 1. Provisions of the Rules of Court. --- The provisions of the Rules of Court, unless inconsistent, shall have suppletory effect on those Rules. (Amended). [Underscoring Supplied].

Since we have painstakingly probed said SEC rules but unearthed nothing that squarely treats of a situation where an individual and a corporate entity both filed together a petition for suspension of payments, recourse must then be had to the Rules of Court which is expressly made suppletory to the SEC rules. In this regard, we find Section 11, Rule 3 of the 1997 Rules of Civil Procedure applicable which provides:

“SEC. 11. Misjoinder and non-joinder of parties. --- Neither misjoinder nor non-joinder of parties is ground for dismissal of an action. Parties may be dropped or added by order or the court on motion of any party or on its own initiative at any stage of the action and on such terms as are just. Any claim against a misjoined party may be severed and proceeded with separately. (11a) [Underscoring supplied]

From the foregoing, it is thus clear that in a case of misjoinder of parties --- which in this case is the co-filing of the petition for suspension of payments by both the Yutengcos and the EYCO group --- the remedy has never been to dismiss the petition in its entirety but to dismiss it only as against the party upon whom the tribunal or body cannot acquire jurisdiction. The result, therefore, is that the petition with respect to EYCO shall subsist and may be validly acted upon by the SEC. The Yutengcos, on the other hand, shall be dropped from the petition and be required to pursue their remedies in the regular courts of competent jurisdiction.[34]

We are, of course, aware of the argument advanced by petitioner that the petition should be entirely dismissed and taken out of the SEC’s jurisdiction on account of the alleged insolvency of private respondents. In this regard, petitioner theorizes that private respondents have already become insolvent when they allegedly disposed of a substantial portion of their properties in fraud of creditors, hence, suspension of payments with the SEC is not the proper remedy.

Such argument does not persuade us. Petitioner’s allegation of fraudulent dispositions of private respondents’ assets and the supposed insolvency of the latter are hardly of any consequence to the assumption of jurisdiction by the SEC over the nature or subject matter of the petition for suspension of payments. Aside from the fact that these allegations are evidentiary in nature and still remains to be proved, we have likewise consistently ruled that

what determines the nature of an action, as well as which court or body has jurisdiction over it, are the allegations of the complaint, or a petition as in this case, and the character of the relief sought.[35] That the merits of the case after due proceedings are later found to veer away from the claims asserted by EYCO in its petition, as when it is shown later that it is actually insolvent and may not be entitled to suspension of payments, does not divest the SEC at all of its jurisdiction already acquired at its inception through the allegations made in the petition.

Neither are we convinced by petitioner's reasoning that the Yutengcos and the corporate entities making up the EYCO Group, on the basis of the footnote[36] that the former were filing the petition because they bound themselves as surety to the corporate obligations, should be considered as mere individuals who should file their petition for suspension of payments with the regular courts pursuant to Section 2 of the Insolvency Law.[37] We do not see any legal ground which should lead one to such conclusion. The doctrine of piercing the veil of corporate fiction heavily relied upon by the petitioner is entirely misplaced, as said doctrine only applies when such corporate fiction is used to defeat public convenience, justify wrong, protect fraud or defend crime.[38]

## II. Non-Exhaustion of Administrative Remedies and Forum-Shopping

Equally weak is petitioner's challenge on the Court of Appeals' decision dismissing its petition for certiorari for failure to exhaust administrative remedies. Its complaint that the SEC Hearing Panel was acting without jurisdiction in conducting proceedings relative to private respondents' petition and for rendering moot and academic its Motion to Dismiss does not justify the procedural "short-cut" it took to the appellate court. Basic is the rule which has been consistently held by this Court in a long line of cases that "before a party is allowed to seek the intervention of the court, it is a pre-condition that should have availed of all the means of administrative processes afforded by him. Hence, if a remedy within the administrative machinery can still be resorted to by giving the administrative officer concerned every opportunity to decide on a matter that comes within his jurisdiction, then such remedy should be exhausted first before the court's judicial power can be sought. The premature invocation of court's intervention is fatal to one's cause of action." [39] That this is the prevailing rule is aptly explained thus:

"The underlying principle of the rule of exhaustion of administrative remedies rests on the presumption that the administrative agency, if afforded a complete chance to pass upon the matter, will decide the same correctly. There are both legal and practical reasons for the principle. The administrative process is intended to provide less expensive and more speedy solutions to disputes. Where the enabling statute indicates a procedure for administrative review and provides a system of administrative appeal or reconsideration, the courts --- for reason of law, comity, and convenience --- will not entertain a case unless the available administrative remedies have been resorted to and the appropriate authorities have been given an opportunity to act and correct the errors committed in the administrative forum." [40]

In this case, petitioner was actually not without remedy to correct what it perceived and supposed was an erroneous assumption of jurisdiction by the SEC without having recourse immediately to the Court of Appeals. Under Section 6 (m) of P.D. No. 902-A, it has been expressly provided that "the decision, ruling or order of any such Commissioner, bodies, boards, committees and/or officer may be appealed to the Commission sitting en banc within thirty days after receipt by the appellant of notice of such decision, ruling or order." Such procedure being available, could have been resorted to by petitioner which, however, it chose to forego. Furthermore, by taking up the matter with the SEC, it could still have obtained an injunction which it similarly sought from the appellate court via its petition for certiorari because the said body has been empowered by Section 6 (a) of P.D. No. 902-A "to issue preliminary or permanent injunctions whether prohibitory or mandatory, in all cases in which it has jurisdiction...." Finally, petitioner itself hardly concealed the fact that it distrusted altogether the whole mechanism of appeal to the SEC en banc, which is why it did not find resort thereto imperative. Thus, it explicitly stated that "it is a given that SEC will not reverse itself, therefore, any reconsideration or appeal en banc would be

a mere exercise of futility, [particularly] when public respondent Associate Commissioner Fe Gloria is the acting Chairperson of SEC." [41] What basis does petitioner have in casting doubt on the integrity and competence of the SEC en banc? This baseless, even reckless, reasoning hardly deserves an iota of attention. It cannot justify a procedural short-cut quite contrary to law. If this were so, then the SEC en banc would not have been empowered at all by the statute to take cognizance of appeals from its subordinate units. But the lawmakers, having faith in a collegial body such as the SEC en banc, precisely empowered it to act as such appellate body. Whatever opinion petitioner entertains with respect to the SEC's competence cannot override the fact that the law mandates recourse thereto.

As to the issue of forum-shopping, we fully subscribe to the Court of Appeals in ruling that such violation existed when it declared:

"Finally, the charge that petitioner is guilty of forum shopping --- which is the institution of two or more actions or proceedings grounded on the same cause --- cannot unceremoniously be glossed over. It is patent that the instant petition and the pending motion to dismiss before the SEC raise identical issues, namely, lack of jurisdiction and the propriety of the suspension of payments." [42] [Underscoring supplied]

Actually, even a simple perusal of the pleadings filed by petitioner before this Court reveals that it has been continuously reiterating the same arguments that it had earlier raised in its Motion to Dismiss and its Petition for Certiorari before the appellate court. Hence, we do not see why the appellate court's decision on this aspect should not be sustained.

WHEREFORE, the instant petition is hereby DENIED for lack of merit. Finding neither reversible error nor grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Court of Appeals, its decision dated December 22, 1997 is AFFIRMED. Furthermore, the Temporary Restraining Order (TRO) issued by this Court in its resolution order of January 6, 1988, is hereby LIFTED and/or DISSOLVED. However, the Securities and Exchange Commission is directed to drop from the petition for suspension of payments filed before it the names of Eulogio O. Yutingco, Caroline Yutingco-Yao, and Theresa T. Lao without prejudice to their filing a separate petition in the Regional Trial Courts.

Cost against petitioner.

### **SO ORDERED.**

Narvasa, C.J., (Chairman), and Kapunan, JJ., concur. Purisima, J., no part, having taken part in the decision of CA.

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[1] The EYCO Group of Companies is composed of Nikon Industrial Corporation, Nikolite Industrial Group of Corporation, 2000 Industries Corporation, Trade Hope Industrial Corporation, First Unibrands Food Corporation, Integral Steel Corporation, Clarion Printing House, Inc., Nikon Plaza, Inc., Nikon Land Corporation, EYCO Properties, Inc., and Thames Philippines, Inc.

[2] Docketed as SEC Case No. 09-97-5764.

[3] Rollo, pp. 67-68.

[4] Id., p. 65d. The footnote states: "Eulogio O. Yutingco, the President CEO, Caroline Yutingco-Yao, Director and Theresa T. Lao, Director, are included as co-petitioners in this case due to the respective personal undertakings that they signed with the creditors under J.S.S. Cause (Joint Several Solidary Guaranty) that

benefited the EYCO Group of Cos., thereby in effect discarding the Veil of Corporate Fiction on their personal selves.”

[5] *Id.*, pp. 75-79.

[6] The consortium is composed of the following: Philippine National Bank, Far East Bank and Trust co., Allied Bank, Traders Royal Bank, Philippine Commercial and International Bank, Bank of Commerce, Westmont Bank, Asiatrust Bank, Bank of the Philippine Islands, Bank of Southeast Asia, Development Bank of the Philippines, Land Bank of the Philippines, Metropolitan Bank and Trust Co., Orient Bank, Rizal Commercial Banking Corporation, Solid Bank, Lippo Asia Investment Corporation, Dharmala Capital Investment and Trust Co., Batangas Savings and Loan Bank, Puregold Finance, Inc., and Prosperity Financial Resources, Inc.

[7] It appears that Union Bank granted private respondent corporations credit facilities in the principal amount of One Hundred Ten Million Pesos (P110,000,000.00) under two Credit Line Agreements dated September 12, 1996 and July 31, 1997. At the same time, the spouses Eulogio O. Yutingco and Bee Kuan W. Yutingco bound themselves solidarily with said corporations by executing two Continuing Surety Agreements in favor of the bank as security for the said credit accommodations.

[8] *Rollo*, pp. 166-168.

[9] In an order dated September 24, 1997, the trial court through Judge Oscar B. Pimental of Branch 148, Regional Trial Court-Makati granted the prayer for preliminary attachment after Union Bank shall have posted a bond in the amount of Seventy Five Million Pesos (P75,000,000.00), Annex “M” of Amended Petition, *id.*, pp. 597-598. A writ of preliminary injunction was issued a day after.

[10] The trial Court through Judge Floro P. Alejo likewise granted Union Bank’s prayer for preliminary injunction in an order dated October 7, 1997 after the bank shall have posted a bond in the sum of Five Million Pesos (P5,000,000.00). After Union Bank posted the requisite bond, the trial court issued a writ of preliminary injunction on October 16, 1997, Annex “N” of Amended Petition, *Id.*, pp. 599-601.

[11] A copy of this order does not appear in the record but merely referred to by the interim receivers themselves in their Comment filed before this Court on January 30, 1998.

[12] Annex “P”, Amended Petition, *id.*, pp. 678-700.

[13] *Id.*, pp. 103-104.

[14] *Id.*, pp. 105-150. Docketed as CA-G.R. SP No. 45774.

[15] *Id.*, pp. 151.

[16] *Id.*, pp. 154-155.

[17] *Id.*, pp. 157-165.

[18] *Id.*, pp. 194-233.

[19] *Id.*, pp. 54-62. Penned by Agcaoili, J.; Purisima and Ibay-Somera, JJ., concurring.

[20] *Id.*, pp. 3-52.

[21] *Id.*, pp. 316-402.

[22] *Id.*, pp. 991-994.

[23] Id., pp. 936-938.

[24] Id., pp. 942-988.

[25] Id., pp. 1073-1078.

[26] Id., pp. 1081-1098.

[27] Id., pp. 1110-1165.

[28] Id., pp. 1214-1219.

[29] Id., pp. 1295-1298.

[30] Republic v. Court of Appeals and ACIL Corporation, 263 SCRA 758 (1996); Amigo v. Court of Appeals, et al., 253 SCRA 382 (1996) citing Isidro v. Court of Appeals, et al., 228 SCRA 503 (1993) and Ilaw at Buklod ng Manggagawa (IBM) v. National Labor Relations Commission 219 SCRA 536 (1993).

**[31] 163 SCRA 534 (1988).**

**[32] 177 SCRA 788 (1989).**

[33] G.R. No. 127166 promulgated on March 2, 1998.

[34] Under Section 2 of Act no. 1956 also known as the “Insolvency Law” an individual person, sociedad or a corporation may file a petition in the regular courts that he be declared in the state of suspension of payments. This provision, however, is deemed to have been impliedly repelled or modified by P.D. No. 902-A, as amended, which now vests jurisdiction over suspension of payments filed by corporations, partnerships, and associations with the SEC. Hence, individuals seeking to be declared in a state of suspension of payments are the only one required now to file their petitions with the regular courts. See note no. 37, infra.

[35] Javelosa v. Court of Appeals, et al., 265 SCRA 493 (1996); Amigo v. Court of Appeals, et al., 253 SCRA 382 (1996); Cañiza v. Court of Appeals, 268 SCRA 640 (1997); Bernardo, Sr., et al., v. Court of Appeal, et al., 263 SCRA 680 (1996).

[36] See footnote no. 4.

[37] SEC 2. The debtor who, possessing sufficient property to cover all his debts, be it an individual person, be it a sociedad or corporation, foresees the impossibility of meeting them when they respectively fall due, may petition that he be declared in the state of suspension of payments by the court, or the judge thereof in vacation, of the province or of the city in which he has resided for six months next preceding the filing of his petition. x x x”

[38] Yu v. National Labor Relations Commission, 245 SCRA 134 (1995).

[39] Paat v. Court of Appeals, et al., 266 SCRA 167 (1997).

[40] University of the Philippines v. Catungal, Jr., et al., G.R. No. 121863, May 5, 1997.

[41] Rollo, p. 365.

[42] Id., p. 61.

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