SAN JOSE TIMBER CORPORATION AND CASILAYAN SOFTWOOD DEVELOPMENT CORPORATION, PETITIONERS, VS. SECURITIES AND EXCHANGE COMMISSION, TIERRA FACTOR CORPORATION AND OTHER CREDITORS OF...

G.R. No. 162196. February 27, 2012

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for review on certiorari under Rule 45 seeking to set aside the September 22, 2003 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 70898, entitled "San Jose Timber Corporation, et al. v. Securities and Exchange Commission, et al.," which affirmed the May 6, 2002 Decision[2] of the Securities and Exchange Commission (SEC), in SEC Case No. 3843, dismissing the petition for appointment of a rehabilitation receiver and suspension of payments filed by San Jose Timber Corporation (SJTC) and Casilayan Softwood Development Corporation (CSDC) and ordering the dissolution and liquidation of SJTC.

The Facts

Petitioner CSDC is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines and the controlling stockholder and creditor of petitioner SJTC, being the owner of more than 99% of its outstanding capital stock.

Petitioner SJTC is primarily engaged in the operation of a logging concession with a base camp in Pabanog, Wright, Western Samar, under and by virtue of a Timber License Agreement (TLA) No. 118 issued by the Department of Environment and Natural Resources (DENR). The TLA was to expire in 2007.

On February 8, 1989, the DENR issued a Moratorium Order (MO) suspending all logging operations in the island of Samar effective February 1989 up to May 30, 1989.

As a consequence, SJTC was constrained to cease operations effective February 8, 1989, despite the fact that the expiration of the period set forth in the MO was still up to May 30, 1989.

The cessation of its operations caused SJTC to lose all its income. Thus, on August 7, 1990, SJTC and CSDC filed with the SEC a petition for the appointment of a rehabilitation receiver and for suspension of payments entitled, "In Re: Petition for the Appointment of a Rehabilitation Receiver for SJTC Timber Corporation and For Suspension of Payments," which was docketed as SEC Case No. 3843.

After due hearing, the SEC Hearing Panel, in its Order dated March 14, 1991, granted the appointment of a rehabilitation receiver and suspension of payments with the condition that SJTC would "resuscitate its operations and properly service its liabilities in accordance with the duly approved schedule to be submitted by the Rehabilitation Receiver"[3] within a one (1) year period.

On February 26, 1992, the petitioners submitted their Motion to Approve Revised Rehabilitation Plan and Urgent

Motion to Extend Waiting Period for Commencement of Rehabilitation dated February 24, 1992 to allow the proper government authorities to deliberate on and approve the lifting of the existing logging moratorium in Samar. The petitioners prayed that the waiting period be extended by one (1) year and five (5) months from March 15, 1992.

The SEC Hearing Panel extended the waiting period up to August 15, 1992 but held in abeyance its approval of the revised rehabilitation plan.

Upon subsequent motions of petitioners, SJTC and CSDC, the SEC Hearing Panel extended the waiting period several times.

Meanwhile, on March 4, 1996, prior to the expiration of the waiting period to commence rehabilitation, the petitioners filed their Motion For Settlement of Claims Against Petitioner San Jose dated February 21, 1996. Considering that the lifting of the logging moratorium in Samar did not appear to be close to fulfillment at that juncture, the petitioners offered to either (1) pay the claims of the creditor in full provided they await the rehabilitation of SJTC; or (2) immediately settle the claims of the creditors by paying them 30% of their substantiated claims. They alleged that:

> 1. The Honorable Hearing Panel's Order of 6 March 1995 extended the waiting period for the commencement of the rehabilitation of petitioner San Jose Timber Corporation ("San Jose") for one year, or up to 6 March 1996.
>
> 1.1 However, with barely a week before the lapse of this deadline, the precondition for the commencement of the rehabilitation as set forth in the proposed rehabilitation plan, i.e., the lifting of the logging moratorium in the place where the timber concession is located either by the enactment of a selective logging law or the administrative cessation of the moratorium, does not appear to be close to fulfillment soon.
>
> 1.2 The claimants thus face the uninviting prospect of seeing petitioner San Jose being dissolved and its few remaining assets, worth no more than P15 Million, being fought over by supposed creditors whose combined claim exceeds P54 Million. Even if these assets are prorated among the creditors, each one of them will get less than 25% of his claim.[4]

In its Order[5] dated July 30, 1996, the SEC granted the motion for settlement of claims subject to certain conditions specifically stated in the dispositive portion of the said order, which reads:

> WHEREFORE, it appearing that the approval of the proposal of petitioner is to the best interest of all the creditors of SJTC, and considering that the same is not contrary to law, morals or public policy the proposal that SJTC shall pay the interested claimants 30% of the principal claims is hereby APPROVED, and shall be binding upon all those interested claimants subject to the following conditions:
>
> 1. That the claims of the interested claimants are sufficiently substantiated and the same are confirmed by the Rehabilitation Receiver;
>
> 2. That the funding for the settlement will be sourced from the advances to be made by corporate creditors Jaka Equities Corporation, Royal Match, Inc., Eurasia Carriers Company, Inc. and Casilayan Softwood Development Corporation, which corporate creditors will be reimbursed the full amount of their advances plus interests at the same rates applicable to the remaining creditors upon the rehabilitation of SJTC;
>
> 3. That those who objected to the 30% settlement offer and those who while failing to object, deem it appropriate not to accept the offer now, still have the option to wait for the eventual rehabilitation of SJTC and be paid in the manner and to the extent set forth in the rehabilitation plan that will be approved by this Hearing Panel; and

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> 4. That the rehabilitation of SJTC will commence upon the lifting of the logging moratorium in its logging concession either by the enactment of a statute allowing selective logging or the lifting of the said moratorium.
>
> Petitioners are hereby directed to furnish the creditors of this Order at their own expense.
>
> SO ORDERED.

Subsequently, the petitioners filed their Motion to Dispose of Personal Properties dated May 7, 1997 which was granted by the SEC in its Order dated November 26, 1997. The SEC ordered the proceeds of the sale be deposited in an escrow account to be withdrawn only for the settlement of petitioners' obligation.[6]

On May 6, 2002, however, the SEC En Banc motu proprio handed down its decision terminating the rehabilitation proceedings and dismissing the petition for rehabilitation. The SEC opined that SJTC could no longer be rehabilitated because the logging moratorium/ban, which was crucial for its rehabilitation, had not been lifted. The SEC decision, in its pertinent parts, reads:

> Based on the foregoing, it is evident that the instant petition should have been dismissed long ago. It is quite obvious that San Jose can no longer be rehabilitated. In fact, the prospect for its rehabilitation has been dim from the very beginning in the light of the uncertainty surrounding the lifting of the logging moratorium. If the previous Hearing Panel had been lenient and accommodating, it could only have been because of its honest belief that it would be in the best interest of all parties, particularly the creditors who would not be able to collect fully on their claims, to attempt to rehabilitate San Jose. But even the best of intentions cannot prop an unachievable aspiration ad infinitum. It has been more than thirteen years since the DENR imposed the logging moratorium and the same is still effective. Xx x.
>
> The hopelessness and futility of petitioners' cause is further made manifest in the petitioners' and the rehabilitation receiver's silence and inaction for almost five years. The only thing that keeps petitioners interested in the instant petition is San Jose's Timber Licensing Agreement (TLA) that is set to expire in 2007, the preservation of which appears to still be of some value to petitioners. X x x.[7]

The May 6, 2002 Decision of the SEC was affirmed by the CA in its September 22, 2003 Decision stating, among others, that:

> " . . . Adequately clear from the records is that the proposed rehabilitation plan submitted by the petitioners depends entirely on the lifting of the logging ban either because of the lifting of the moratorium on logging activities in Samar issued by the DENR, or by the enactment of a law on selective logging. Needless to say, the lifting of the logging ban is indispensable to the rehabilitation of petitioners' logging company. However, other than the petitioners' bare assertion that the lifting of the logging moratorium or the enactment of a law on selective logging is 'foreseeable" and is likely to happen in the near future, there is simply no evidence on record to show, with certainty that it is indeed, going to take place in the immediate future. Verily, to sustain petitioners' assertions could result to an unjust situation wherein the corporate rehabilitation will continually be held in abeyance pending the approval of the law on selective logging or the lifting of logging moratorium, the happening of which is uncertain considering the absence of evidence to prove that there is an imminent likelihood of its occurrence. Such a situation is definitely prejudicial to the interests of the creditors and the investors whose rights the law is precisely designed to protect."[8]

The petitioners filed a motion for reconsideration of the aforesaid decision but it was denied in the CA Resolution dated January 29, 2004.

On March 8, 2004, the petitioners filed this petition for review before this Court on the ground that the CA erred in affirming the dissolution of SJTC when the vast majority of the creditors had agreed to await the rehabilitation of SJTC. They believe that the rehabilitation was still feasible considering that the TLA was still valid up to 2007 and under the proposed revised rehabilitation plan of SJTC, the latter would only need 24 months after the lifting

of the logging moratorium to fully settle the claims of the creditors, except those of the affiliates.

Significantly, except for the Social Security System (SSS), which incidentally had no more claims against SJTC, none of the creditors filed an opposition to or comment on the petition.

Meanwhile, during the pendency of the petition before the Court, the DENR issued an Order dated August 15, 2005, allowing SJTC to resume operations and extending the term of the TLA up to 2021. The dispositive portion of the Order reads:

> WHEREFORE, in light of the foregoing, the Moratorium Order dated 8 February 1998 is hereby recognized as having lapsed on 30 May 1989. San Jose Timber Corporation is hereby allowed to pursue its rights and activities under its TLA No. 118 until 30 June 2007, with an extension of the period of said TLA equivalent to the time that elapsed from 31 May 1989 until promulgation of this Order.
>
> SO ORDERED.[9]

Consequently, on October 14, 2005, the petitioners filed their Supplemental Petition[10] with the Court citing the August 15, 2005 DENR Order praying for the reversal of the CA decision and the remand of the case to the SEC for the immediate approval and implementation of the rehabilitation plan.

On July 9, 2008, the Court resolved to dispense with the comments of the other respondent creditors, gave due course to the petition and directed the parties to submit their respective memoranda within thirty (30) days from notice.[11]

Records disclose that on October 6, 2008, SJTC and CSDC filed their Memorandum. Thereafter, the SEC and the SSS filed their respective memoranda. On January 29, 2009, petitioners SJTC and CSDC filed their Reply Memorandum.

In its Resolution dated March 30, 2009, the Court resolved to note the filing of the Reply Memorandum and to await the memoranda of the other respondent creditors.

To date, no other memorandum has been filed.

In their Memorandum, the petitioners advanced the following

> ARGUMENTS
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> A. THE COURT OF APPEALS GRAVELY ERRED AND ACTED CONTRARY TO LAW WHEN IT UPHELD THE DECISION DATED 6 MAY 2002 OF THE SECURITIES AND EXCHANGE COMMISSION WHICH ORDERED THE IMMEDIATE DISSOLUTION OF PETITIONER SAN JOSE, CONSIDERING THAT:
>
> 1. THE MANDATE OF THE SEC IS NOT TO IMMEDIATELY LIQUIDATE ANY DISTRESSED CORPORATION; RATHER, IT IS TO PROMOTE A WIDER AND MORE EQUITABLE DISTRIBUTION OF WEALTH.
>
> 2. THE REHABILITATION OF PETITIONER SAN JOSE IS STILL FEASIBLE.
>
> 3. THE SEC ILLEGALLY SUBSTITUTED ITS WILL OVER THAT OF THE CREDITORS, THE VAST MAJORITY OF WHOM HAVE AGREED TO WAIT FOR THE LIFTING OF THE LOGGING MORATORIUM SO THAT PETITIONER SAN JOSE CAN COMMENCE REHABILITATION.
>
> 4. LIQUIDATION WILL NOT SERVE ANY USEFUL PURPOSE. IT IS DISADVANTAGEOUS TO BOTH CREDITORS AND PETITIONERS. MOREOVER, THE PURPOSE OF THE LIQUIDATION HAS BEEN SERVED IN THE REHABILITATION PROCEEDINGS.[12]

In advocacy of their position, the petitioners argue that the SEC acted illegally and beyond its statutory mandate when it ordered the termination of the rehabilitation proceedings. The CA, in turn, acted contrary to law when it upheld the SEC's decision.

The petitioners posit that while the SEC is empowered to motu propio terminate rehabilitation when, in its opinion, it is no longer feasible, Presidential Decree (P.D.) No. 902-A qualifies that such power must be exercised taking into consideration the "best interest of the stockholders, parties-litigants, creditors, or the general public." Clearly, the SEC is mandated to protect not only the creditors but the distressed corporation as well. This is because the "rehabilitation of a financially distressed corporation benefits its employees, creditors, stockholders and, in a larger sense, the general public."[13]

It is further argued that when the decision of the SEC to terminate the rehabilitation of a corporation and order its dissolution will not lead to a meaningful and equitable distribution of wealth among the creditors, stockholders and employees, such decision can be struck down as illegal for being violative of the statutory mandate of the SEC. The SEC illegally ordered the dissolution of SJTC because (1) the rehabilitation is still feasible; and (2) the immediate dissolution is actually detrimental to the interests of the creditors.[14]

The petitioners believe that the rehabilitation of SJTC is feasible because its major corporate creditors, namely: Jaka Investment Corporation, Jaka Equities Corporation, Royal Match, Inc., Eurasia Carriers Company, Inc. and Casilayan Softwood Development Corporation, have a combined credit of P36 million. This amount constitutes more than 66% of the liabilities of SJTC. These corporate creditors have agreed to extend the waiting period for the commencement of the rehabilitation of SJTC until such time that the logging moratorium is lifted.

It is likewise averred that liquidation will not have any useful purpose. It is disadvantageous to both creditors and petitioners. Moreover, the purpose of the liquidation has been served in the rehabilitation proceedings. If SJTC is liquidated, its assets, divided by its existing liabilities, will give each creditor only 27% of their respective claims. Indeed, as found by the SEC Hearing Panel in its July 30, 1996 Order,[15]

> [It] is clear from the uncontested figures relative to the total assets and liabilities of SJTC that each creditor will get less than 30% of the value of its claim. The reason for this is that dividing SJTC's total assets in the amount of ?14,405,868.00 by its total liabilities in the amount of P53,519,650.00 will yield a factor of only .27, which corresponds to 27%.

Position of the SEC

The SEC agrees that its primary basis in dismissing the petition for the appointment of a rehabilitation receiver and suspension of payment has been lost because of the DENR's Order dated August 15, 2005 lifting the logging moratorium and allowing SJTC to continue its logging operations under TLA No. 118.

Despite the same, it is of the position that SJTC's rehabilitation is no longer feasible and viable because it has already disposed of its properties such as various machineries and equipment and other valuable assets which are indispensable to its logging operations. In other words, SJTC can no longer continue its logging operations because it now lacks the necessary tools and equipment to pursue its business operations.[16]

Moreover, SJTC's failure to report to the SEC what happened to the disposition of its personal properties and the status of the settlement of 30% claims as enumerated in its May 6, 2002 Decision justifies the dismissal of its petition pursuant to Section 4-26, Rule IV of the SEC Rules of Procedure on Corporate Rehabilitation.[17]

In sum, notwithstanding the lifting of the logging moratorium, the SEC avers that SJTC can no longer be revived and restored to its former successful operation and solvency given the foregoing considerations.

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The SEC also avers that as to the inaction of the creditors of STJC, it cannot be construed as an acquiescence to await its full rehabilitation. What appears on record is that some of SJTC's creditors manifested their desire that SJTC be liquidated now so that their claims against it may be finally settled.[18]

Finally, the SEC posits that liquidating SJTC would work to its advantage because the accrued interest on all its debts would no longer accumulate. Its creditors would get a higher percentage for the settlement of their claims. Likewise, the early liquidation of SJTC could result in a big turnout of proceeds of the sale of its assets that could satisfy all the claims of its creditors.[19]

SJTC's Reply to SEC

SJTC replies that notwithstanding the sale of its machineries and equipment, the rehabilitation of SJTC remains viable and feasible. As stated in its petition for certiorari in the CA, SJTC's corporate affiliates have undertaken to infuse the necessary capital to jump-start its operations as soon as the logging ban would be lifted.

Conditions have dramatically changed with the August 15, 2005 Order of DENR categorically holding that the logging moratorium had already lapsed and that, accordingly, SJTC could resume operations immediately. The DENR extended the TLA by the period equivalent to the time that elapsed from May 31, 1989 until the promulgation of the said order. The TLA will, thus, subsist for another fourteen (14) years, or up to 2021.

The sole impediment to the rehabilitation of SJTC has, thus, been removed.

After the DENR issued its Order allowing SJTC to immediately resume operations, it adjusted its revised rehabilitation plan (1992) taking into account the present requirement to operate the logging concessions. Based on the Adjusted Rehabilitation Plan (ARP), SJTC will need P70 million pesos to fully operate the logging operations in 1989. There is more than sufficient quantity of commercial timber to support the intended operations of SJTC.

Under the ARP, SJTC would be able to complete the set-up for its commercial operations within nine (9) months from resumption. During that period, SJTC would hire personnel, purchase new equipment, rehabilitate the roads, buildings and other infrastructure necessary for the commercial operations.

Commercial operations would begin on the second year of operation at an annual production of 56,000 cubic meters, which was only about 75% of the company's allowable harvest of 75,000 cubic meters.

Under the 2009 prevailing market, the average selling price for the first grade logs was estimated at P7,200.00 per cubic meter and P5,100.00 per cubic meter for the second grade logs.

Based on these projections, SJTC would be able to generate gross revenue in the amount of at least P342 million on the first year of commercial production, or within eighteen months from the date of the resumption of operation.

The remaining unpaid liabilities to the creditors, excluding corporate affiliates who agreed to be paid last, was estimated to be no more than P11 million. As of December 1991, the unpaid claims of creditors excluding that of the petitioners' corporate affiliates amounted to P14,369,531.27. Subsequently, the petitioners settled the claims of 22 creditors who opted to be paid 30% of their claims instead of waiting for the rehabilitation of SJTC. The aggregate value of the settled claims was P3,110,885.00.

Under the proposed ARP, SJTC would be able to pay its creditors, except its corporate affiliates, in full within 18 months from the time it would resume operation. This is an improvement from the old rehabilitation plan which provided payment to the creditors, excluding the affiliates, within 24 months from resumption of operations.

By contrast, if SJTC would be dissolved and liquidated, each creditor would receive no more than 14% of their principal claims.

SJTC argues that this has been the reason why the remaining creditors have not opposed the move to rehabilitate SJTC. The records will show that although there were initially four (4) out of 144 creditors who opposed the petition for rehabilitation at the SEC level, none of the creditors opposed the petition at the CA level. Before this Court, only the SSS, which is no longer a creditor, filed an opposition.[20]

Position of SSS

SSS agrees with the decision of the SEC and the CA in dismissing the petition for rehabilitation quoting the CA's decision that: "Rehabilitation of a corporation must be based on a viable and feasible plan; otherwise, the rehabilitation sought cannot be granted."[21]

The liability of the petitioners to SSS consists of the delinquent contribution for the SSS and ECC contributions of its employees, almost 50% of which represents deduction from the employees' salaries and, therefore, do not form part of the assets of the corporation. Hence, said liabilities should be settled ahead of the creditors. The 3% penalty imposed on the delayed remittance of contributions is enforced by law while the loan amortizations were deducted from the salary of its employees for remittance to the SSS.

SJTC'S Reply to SSS Memorandum

On May 23, 1997, SJTC submitted a proposal to avail itself of the SSS condonation program for its contribution delinquency in the amount of P1,394,672.00. In a letter dated April 6, 1998, the Employer Accounts Collection Department of the SSS favorably endorsed its proposal for approval, provided payment was made on or before May 23, 1998.

On May 22, 1998, SJTC paid its SSS obligations in full.

SSS did not question the fact of payment. By its silence, SSS has acknowledged that SJTC is no longer indebted to it,

The Court's Ruling

Rehabilitation contemplates a continuance of corporate life and activities in an effort to restore and reinstate the corporation to its former position of successful operation and solvency. The purpose of rehabilitation proceedings is to enable the company to gain a new lease on life and thereby allow creditors to be paid their claims from its earnings. The rehabilitation of a financially distressed corporation benefits its employees, creditors, stockholders and, in a larger sense, the general public.[22]

Under the Rules of Procedure on Corporate Rehabilitation, "rehabilitation" is defined as the restoration of the debtor to a position of successful operation and solvency, if it is shown that its continuance of operation is economically feasible and its creditors can recover by way of the present value of payments projected in the plan, more if the corporation continues as a going concern than if it is immediately liquidated.[23]

An indispensable requirement in the rehabilitation of a distressed corporation is the rehabilitation plan. Section 5 of the Interim Rules of Procedure on Corporate Rehabilitation provides the requisites thereof:

> SEC. 5. Rehabilitation Plan. -- The rehabilitation plan shall include (a) the desired business targets or goals and the duration and coverage of the rehabilitation; (b) the terms and conditions of such rehabilitation which shall include the manner of its implementation, giving due regard to the interests of secured creditors; (c) the material financial commitments to support the rehabilitation plan; (d) the means for the execution of the

> rehabilitation plan, which may include conversion of the debts or any portion thereof to equity, restructuring of the debts, dacion en pago, or sale of assets or of the controlling interest; (e) a liquidation analysis that estimates the proportion of the claims that the creditors and shareholders would receive if the debtor's properties were liquidated; and (f) such other relevant information to enable a reasonable investor to make an informed decision on the feasibility of the rehabilitation plan.

"A successful rehabilitation usually depends on two factors: (1) a positive change in the business fortunes of the debtor, and (2) the willingness of the creditors and shareholders to arrive at a compromise agreement on repayment burdens, extent of dilution, etc. The debtor must demonstrate by convincing and compelling evidence that these circumstances exist or are likely to exist by the time the debtor submits his 'revised or substitute rehabilitation plan for the final approval of the court.'"[24]

Given the high standards that the Rules require, mere unsupported assertions by the debtor that "the parties are close to an agreement" or that "business is expected to pick up in the next several quarters" are not sufficient. Circumstances that might demonstrate in a convincing and compelling manner that the debtor could successfully be rehabilitated include the following:

> a)
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> the business fortunes of the debtor have actually improved since the petition was filed;
>
> b)
>
> the general circumstances and forecast for the sector in which the debtor is operating supports the likelihood that the debtor's business will revive;
>
> c)
>
> the debtor has taken concrete steps to improve its operating efficiency;
>
> d)
>
> the debtor has obtained legally binding investment commitments from parties contingent on the approval of a rehabilitation plan;
>
> e)
>
> the debtor has successfully addressed other factors that would increase the risk that the debtor's rehabilitation plan would fail;
>
> f)
>
> the majority of the secured and unsecured creditors have expressly demonstrated a preference that the debtor be rehabilitated rather than liquidated and are willing to compromise on their claims to reach that result;
>
> g)
>
> the debtor's shareholders have expressed a willingness to dilute their equity in connection with a debt equity swap.[25]

Both the SEC and the CA had reasonable basis in deciding to terminate the rehabilitation proceedings of SJTC because of the lack of certainty that the logging ban would, in fact, be lifted. It is clear from the records that the proposed rehabilitation plan of the petitioners would depend entirely on the lifting of the logging ban either by the lifting of the moratorium on logging activities in Samar issued by the DENR, or by the enactment of a law on selective logging. Such lifting of the logging ban is indispensable to the rehabilitation of SJTC. If it would not be

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lifted, the company would have no source of income or revenues and no investor or creditor would come in to lend a hand in its resuscitation.

At the time of the promulgation of the CA decision, there was no certainty that the moratorium on logging activities in Samar would be lifted or a law on selective logging was forthcoming. There being no assurance, the CA was correct in sustaining the decision of the SEC to terminate the rehabilitation proceedings to protect the interest of all concerned, particularly the investors and the creditors. To have resolved otherwise would have been prejudicial to these entities as they would be made to wait indefinitely for something the likelihood of which was quite remote.

On August 15, 2005, however, an event supervened. With the lifting of the logging moratorium in Samar, an indispensable element for the possible rehabilitation of SJTC has been made a reality. Considering the extension granted by the DENR, the TLA of SJTC will expire on 2021, or nine (9) years from now. It appears from the proposed Adjusted Rehabilitation Plan,[26] that SJTC would only need a period of 24 months from the lifting of the logging moratorium within which to liquidate all of its liabilities, except those of its affiliates.

The petitioners have claimed that as of December 31, 1988, the concession's virgin forest cover was 37,800 hectares, with commercial timber estimated at 2.25 million cubic meters.[27] Since the logging operations of SJTC had been stopped in 1989, the petitioners believe that the quantity of commercial timber has grown considerably. Thus, there is more than sufficient quantity of commercial timber to pay the obligations of SJTC to the creditors and to realize a reasonable return of investment.

The Court is of the considered view that SJTC should be given a second chance to recover and pay off its creditors. The only practical way of doing it is to resume the rehabilitation of SJTC which estimated its first year production upon resumption of operations at 29,000 cubic meters.[28] Thereafter, production is projected to rise to 60,000 cubic meters per year.[29] If the estimated selling price per cubic meter as of December 31, 1991 was P3,500.00[30] and between P5,000.00 and P6,000.00 in 2004,[31] there is no doubt that the price has again risen.

The Court is not unaware of the issuance of Executive Order (E.O.) No. 23 on February 1, 2011. E.O. No. 23 declares a Moratorium on the Cutting and Harvesting of Timber in the Natural and Residual Forests and Creates the Anti-Illegal Logging Task Force that will enforce the moratorium. It aims mainly at the promotion of intergeneration responsibility to protect the environment. As pronounced in the DENR website, however, it does not impose a total log ban in the country. What is being protected by the executive order is simply the natural forests and residual forests.[32] Section 2 thereof provides for a moratorium on the cutting and harvesting of timber in the natural and residual forests of the entire country. Timber companies, such as petitioner SJTC, may still be allowed to cut trees subject to the provisions thereof.

Thus, SJTC's rehabilitation appears highly feasible and the proceedings thereon should be revived. It should, therefore, be given an opportunity to be heard by the SEC to determine if it could maintain its corporate existence. For said reason, the case should be remanded to the SEC so that it could factor in the aforecited figures and claims of SJTC and assess whether or not SJTC could still recover. It appears from the figures that SJTC can generate sufficient income to pay all its obligations to all its creditors except, as the petitioners pledged, its corporate affiliates who allegedly represent more than 66% of the liabilities.

WHEREFORE, the September 22, 2003 Decision of the Court of Appeals and its January 29, 2004 Resolution are REVERSED and SET ASIDE. The case is hereby REMANDED to the SEC for further evaluation and appropriate action.

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SO ORDERED.

Velasco, Jr., (Chairperson), Peralta, Abad, and Perlas-Bernabe, JJ., concur.

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[1] Rollo, pp. 31-40. Penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justice Mariano C. del Castillo (now a member of this Court) and Associate Justice Edgardo F. Sundiam.

[2] Id. at 162-166.

[3] Annex “F”, p. 7; Petition, id. at 44-52.

[4] Annex “K,” pp. 1-2, Petition, id. at 125-128.

[5] Annex “P,” pp. 5-7, Petition, id. at 141-147.

[6] Annex “T,” p. 3; Petition, id. at 153-155.

[7] Annex “W,” p. 4; Petition, id. at 162-166.

[8] CA Decision dated September 22, 2003, p. 8; Annex “A” of the Petition, id. at 31-40.

[9] Annex “A,” p. 9; Supplemental Petition, id. at 2686-2694.

[10] Id. at 2651-2667.

[11] Id. at 3308.

[12] Memorandum of SJTC; id. at 3366 to 3367.

[13] Citing Rubber World Phils., Inc. v. NLRC, G.R. No. 126773, April 14, 1999, 305 SCRA 722.

[14] Memorandum for Petitioners, rollo, pp. 3367 to 3369.

[15] Annex “P” of the Petition, id. at 141-147.

[16] SEC Memoranudum, id. at 3430-3431.

[17] Id. at 3431.

[18] Id. at 3432.

[19] Id. at 3434.

[20] Reply Memorandum of SJTC; id. at 3440 to 3452.

[21] Memorandum of SSS; id. at 3321.

[22] Pacific Wide Realty and Pacific Corporation v. Puerto Azul, Inc., G.R. No. 178768, November 25, 2009, 605 SCRA 503, citing Negros Navigation Co., Inc. v. Court of Appeals, Special Twelfth Division, G.R. Nos. 163156 & 166845, December 10, 2008, 573 SCRA 434, 450, citing New Frontier Sugar Corporation v. Regional Trial Court, Branch 39, Iloilo City, G.R. No. 165001, January 31, 2007, 513 SCRA 601; Rubberworld (Phils.), Inc. v. NLRC, G.R. No. 126773, April 14, 1999, 305 SCRA 721; Ruby Industrial Corporation v. Court of Appeals, G.R. Nos. 124185-87, January 20, 1998, 284 SCRA 445.

[23] Id.

[24] PHILJA, Justitia et Lex; Commercial Law; Handbook on Corporate Rehabilitation; Part III – The Rules and

Applicable Jurisprudence in Question and Answer Form, Question No. 82; http://127.0.0.1:8080/rtc_corporate_jurisdiction.php

[25] Id.

[26] Annex “A” of Annex “G,” Petition; rollo, p. 68.

[27] Petition, id. at 304 .

[28] Revised Rehabilitation Plan, Annex “A” of Annex “G” of Petition; id. at 66.

[29] Id.

[30] Id.

[31] Petition, id. at 305.

[32] Bendijo, Lorelei. E.O. 23: Renewing Hopes for Sustainable Forestry in the Philippines. www.denr.gov.ph/index.php/news-and-features/features [visited on December 5, 2011]

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