

**PHILIPPINE NATIONAL BANK AND EQUITABLE PCI BANK,
PETITIONERS, VS. HONORABLE COURT OF APPEALS, SECURITIES
AND EXCHANGE COMMISSION EN BANC, ASB HOLDINGS, INC., ASB
REALTY CORPORAT...**

G.R. No. 165571. January 20, 2009

Ponente: VELASCO JR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-165571/>

VELASCO JR., J.:

This is a petition for review under Rule 45 which seeks the reversal of the July 16, 2004 Decision[1] and October 1, 2004 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 82800. The CA upheld the November 11, 2003 en banc resolution[3] of the Securities and Exchange Commission (SEC) and the orders dated October 10, 2000[4] and April 26, 2001[5] by the SEC Hearing Panel in SEC Case No. 05-00-6609, thus effectively affirming the Rehabilitation Plan submitted by private respondents herein and the appointment of a rehabilitation receiver.

The Facts

Petitioners Philippine National Bank (PNB) and Equitable PCI Bank are members of the consortium of creditor banks constituted pursuant to the Mortgage Trust Indenture (MTI) [6] dated May 29, 1989, as amended, by and between Rizal Commercial Banking Corporation-Trust and Investments Division, acting as trustee for the consortium, and ASB Development Corporation (ASBDC, formerly Tiffany Tower Realty Corporation). Other members of the consortium include Metropolitan Bank and Trust Company (Metrobank), Prudential Bank, Union Bank of the Philippines, and United Coconut Planters Bank. Private respondents ASB Holdings, Inc., ASBDC, ASB Land, Inc., ASB Finance, Inc., Makati Hope Christian School, Inc., Bel-Air Holdings Corporation, Winchester Trading, Inc., VYL Holdings Corporation, and Neighborhood Holdings, Inc. (ASB Group) are corporations engaged in real estate development. The ASB Group is owned by Luke C. Roxas.[7] Under the MTI, petitioners granted a loan of PhP 1,081,000,000 to ASBDC secured by a mortgage of five parcels of land with improvements.[8]

On May 2, 2000, private respondents filed with the SEC a verified petition for rehabilitation with prayer for suspension of actions and proceedings pending rehabilitation pursuant to Presidential Decree No. (PD) 902-A, as amended. The case was docketed as SEC Case No. 05-00-6609. Private respondents stated that they possess sufficient properties to cover their obligations but foresee inability to pay them within a period of one year. They cited the sudden non-renewal and/or massive withdrawal by creditors of their loans to ASB Holdings, the glut in the real estate market, severe drop in the sale of real properties, peso devaluation, and decreased investor confidence in the economy which resulted in the non-completion of and failure to sell their projects and default in the servicing of their credits as they fell due. The ASB Group had assets worth PhP 19,410,000,000 and liabilities worth PhP 12,700,000,000. Faced with at least 712 creditors, 317 contractors/suppliers, and 492 condominium unit buyers, and the prospect of having secured and non-secured creditors press for payments and threaten to initiate foreclosure proceedings, the ASB Group pleaded for suspension of payments while working for

rehabilitation with the help of the SEC.[9]

Private respondents mentioned that in March 2000 and immediately after ASB Holdings incurred financial problems, they agreed to constitute a Creditor's Committee composed of representatives of individual creditors, and to appoint a Comptroller. Private respondents stated that the Comptroller, upon instruction from the Creditor's Committee, withheld approval of payments of obligations in the ordinary course of business such as those due to contractors, unless Roxas agrees to the payment of interest and other arrangements. Private respondents believed that said conditions would eventually harm the general body of their creditors. Private respondents prayed for the suspension of payments to creditors while working out the final terms of a rehabilitation plan with all the parties concerned. Private respondents' petition to the SEC was accompanied by documentary requirements in accordance with Section 4-2 in relation to Sec. 3-2 of the Rules of Procedure on Corporate Recovery.[10]

Finding the petition sufficient in form and substance, the SEC Hearing Panel[11] issued on May 4, 2000 an order suspending for 60 days all actions for claims against the ASB Group, enjoining the latter from disposing its properties in any manner except in the ordinary course of business and from paying outstanding liabilities, and appointing Atty. Monico V. Jacob as interim receiver of the ASB Group. Atty. Jacob was later replaced by Atty. Fortunato Cruz as interim receiver. [12]

The consortium of creditor banks, which included petitioners, filed their Comments/Opposition praying for the dismissal of the petition based on the following grounds:

(a)

Petitioners failed to state a valid cause of action;

(b)

Petitioners failed to comply with the requirements of the Rules of Procedure on Corporate Recovery;

(c)

The Rehabilitation Plan has no basis and offers no solution to address the financial difficulties of petitioners;

(d)

There is no need for a Receiver as petitioners claim that they are solvent;

(e)

The filing of the Petition does not warrant the issuance of a suspension order;

(f)

The Petition should cover only one (1) corporation and should not include the affiliates and subsidiaries

(g)

Petitioners are under the regulatory supervision of various governmental agencies and their respective consents to the filing of the instant Petition have not been obtained;

(h)

The circumstances surrounding the filing of the Petition are replete with evidence of fraud and bad faith; and

(i)

Petitioners do not appear to have sufficient properties to cover their liabilities.[13]

On August 18, 2000, the ASB Group submitted a rehabilitation plan to enable it to meet all of its obligations. The consortium of creditor banks moved for its disapproval on the ground that it is not viable; the proposals are unrealistic; and it collides with the freedom of contract and the constitutional right against non-impairment of contracts, particularly the release of portions of mortgaged properties and waiver of interest, penalties, and other charges. The banks further asserted that the Rehabilitation Plan does not explain the basis of the selling values and the net realizable values of the properties; it irregularly nets out inter-corporation transactions and offsets the receivables amounting to PhP 5.23 billion from Roxas; and it shows that the ASB Group is insolvent and should be subjected to liquidation proceedings. The banks opposed the extension of the suspension order sought by the ASB Group. The consortium also prayed for the early resolution of their opposition to the petition.

On October 10, 2000, the Hearing Panel denied the opposition of the banks and held that the ASB Group complied with the requirements of Sec. 4-1 of the Rules of Procedure on Corporate Recovery, which allows debtors who are technically insolvent to file a petition for rehabilitation. Since the ASB Group foresees its inability to meet its obligations within one year, it was considered technically insolvent and, thus, qualified for rehabilitation under Sec. 4-1. The Panel further held that under Sec. 4-4, suspension of payments is necessarily an effect of the filing of the petition. The appointment of an Interim Receiver as well as the issuance of a 60-day suspension order is mandatory under Sec. 4-4, Rule IV. The ASB corporations are not precluded from jointly filing the petition for rehabilitation since these are beneficially owned by Roxas, their businesses and finances are intertwined such that they made advances to each other and secured their obligations with each other's properties. Joint filing of petition is allowed under Secs. 6 and 7, Rule 3 of the 1997 Rules of Civil Procedure and under case law. As regards the regulatory jurisdiction of the Housing and Land Use Regulatory Board and the Department of Education, Culture and Sports (now the Department of Education) over the business of selling real estate and academic activities of the school, the Hearing Panel held that said jurisdiction does not extend to the petitioning corporations as juridical entities by themselves. With regard to ASB Holdings, the consent of the Central Bank is not required since said corporation is not engaged in quasi-banking operations. Also, the Hearing Panel held that the Creditors Committee was created to address the concerns of the investors of ASB Holdings and did not include the creditor banks. The Hearing Panel found the filing of the petition for suspension of payments and rehabilitation as a sign of good faith on the part of private respondents to settle their obligations.

Upon motion by the ASB Group, the suspension period was extended through an order dated October 27, 2000. The creditor banks appealed the October 10 and 27, 2000 orders by filing before the SEC en banc a Petition for Review on Certiorari with application for a temporary restraining order.[14]

On April 26, 2001, the Hearing Panel approved the Rehabilitation Plan based on the following rationale:

After due deliberation, the Hearing Panel finds that the objections raised by the oppositors are unreasonable and rules to approve the rehabilitation plan.

With regard to the contention of the secured creditors that the Plan infringes upon preference over secured property, the Panel finds this objection unreasonable. According to the Supreme Court in the RCBC vs. IAC G.R. No. 74851 December 9, 1999, and we quote:

The majority ruling in our 1992 decision that preferred creditors of distressed corporations shall, in a way, stand on equal footing with all other creditors, must be read and understood in the light of the foregoing rulings. All claims of both a secured or unsecured creditor, without distinction on this score, are suspended once a management committee is appointed. Secured creditors, in the meantime, shall not be allowed to assert such preference before the Securities and Exchange Commission. x x x

With our approval of the Plan and the appointment of a rehabilitation receiver, the secured creditors may not assert their preferred status while the case is pending before the Commission. It is only when the assets of the

corporation, partnership, or association are finally liquidated, that the secured and preferred creditors under the applicable provisions of the Civil Code will apply.

As to the creditors' contention that the plan did not explain or provide for the basis of the selling values and the net realizable values of the property, we find the same untenable. A reading of the plan as well as the explanation made by the Petitioners, show that the computation was shown as to the manner upon which the petitioners derived the Net Realizable Values. Moreover the Petitioners explained that these values are not much higher than the Cuervo appraisals in 1997 and 2000.

The Interim Receiver appointed by the Commission recommended the approval of the Plan. According to him, the fixed assets of Petitioners are mortgaged to banks and that the bank loans are mostly over collateralized. If the Plan is not approved, the secured creditors will foreclose on the mortgages and will acquire these properties at a value much less than the fair market value. When the Petitioners lose these fixed property, it will not be able to pay their obligation to the 172 individual unsecured creditors with an exposure of P3,951,216,266 and the 317 contractors with an exposure of P58,116,903, and will not be able to deliver sold units to 725 buyers. Therefore, the disapproval of the Plan will greatly prejudice all the other creditors who will be left unpaid.

The Panel agrees with the position taken by the Interim Receiver that we should look into the far-reaching effect of the Plan. The Panel should balance the interests between the secured creditors and the unsecured who may not have any recourse if the Plan is not approved. In this manner we agree with the argument of the individual creditors that we should consider the public interest aspect of this rehabilitation proceeding wherein there are about 725 individually affected creditors with a total stakes of P4 Billion, more than the stake of the bank creditors. The approval of the Plan will not deprive the secured creditors of their right to the mortgaged assets. If there is a subsequent failure of rehabilitation, the availment of their suspended rights over the mortgaged assets will be restored. On the other hand, as earlier stated, the unjustified disapproval of the Plan will greatly prejudice the unsecured creditors who will be left unable to recover their investments or collect their claims.

The Panel however finds that adjustments and set off with regard to the advances made by Mr. Luke Roxas should not be allowed. This however, does not in anyway affect the viability of the Plan.

Meanwhile, the resolution on the Motion for Exclusion of the ASB-Malayan Towers from the assets claimed by petitioners is hereby deferred.

PREMISES CONSIDERED, the objections to the rehabilitation plan raised by the creditors are hereby considered unreasonable.

Accordingly, the Rehabilitation Plan submitted by petitioners is hereby APPROVED, except those pertaining to Mr. Roxas' advances, and the ASB-Malayan Towers. Finally, Interim Receiver Mr. Fortunato Cruz is appointed as Rehabilitation Receiver.

SO ORDERED.[15]

The creditors filed a Supplemental Petition for Review on Certiorari with the SEC en banc to question the foregoing order. On November 11, 2003, the SEC en banc dismissed the petition and its supplement, thus affirming the October 10, 2000 and April 26, 2001 orders of the Hearing Panel. The SEC en banc held:

We rule against petitioner.

First, the Commission En Banc, in three separate cases, had affirmed the approval by the Hearing Panel of the Rehabilitation Plan of private respondents. We declared that the Hearing Panel acted within its legal authority in resolving the petition for rehabilitation of private respondents. Neither it overstepped its lawful authority nor

acted whimsically in approving the subject Rehabilitation Plan. Hence, it could not be faulted of grave abuse of discretion. We could not arrive at different conclusion in the instant case other than uphold the approval of private respondents' Rehabilitation Plan.

Second, it is noteworthy to mention that as of 31 December 2002, fifty-four percent (54%) of the total obligations of private respondents with creditor banks have been settled. That constitutes majority of the total obligations owned by private respondents to secured creditors.

WHEREFORE, premises considered, the instant petition is DISMISSED. Accordingly, the assailed Orders are AFFIRMED.

SO ORDERED.[16]

The Ruling of the CA

Petitioners went to the CA via a petition for certiorari under Rule 65, alleging grave abuse of discretion on the part of the SEC in dismissing the creditors' petition for review on the ground that 54% of the total obligations of the ASB Group with creditor banks have been settled. The SEC also allegedly did not make its own independent findings much less come up with substantial evidence to support its resolution, thus violating petitioners' right to due process and ignoring the constitutional rights of the banks against non-impairment of contracts. Petitioners also questioned the remedy availed of by the ASB Group since a solvent corporation cannot file a petition for rehabilitation nor be placed under receivership. They maintained that the SEC should not have approved the Rehabilitation Plan over the objection of the consortium of creditor banks.

The CA held that the Rules of Procedure on Corporate Recovery allows financially distressed corporations to file for either suspension of payments (Rule III, Sec. 3-1) or rehabilitation (Rule IV, Sec. 4-1). The Rules, the CA said, does not preclude a solvent corporation, like the ASB Group, to file a petition for rehabilitation instead of just a petition for suspension of payments because such temporary inability to pay obligations may extend beyond one year or the corporation may become insolvent in the interim. It stated that the determination of the sufficiency of the petition and the question of propriety of the petition filed by the ASB Group are matters within the technical competence and administrative discretion of the SEC. Also, according to the CA, there was no grave abuse of discretion on the part of the Hearing Panel in appointing an interim receiver because such is prescribed by the Rules. As regards the Rehabilitation Plan, the CA agreed with the Hearing Panel's finding that the plan's disapproval will greatly prejudice all the other creditors who will be left unpaid. Moreover, the CA explained that the approval of the Rehabilitation Plan does not violate the right against impairment of contracts since the legal consequence of rehabilitation proceedings is merely a temporary suspension of such payments of obligations falling due and not cancellation or repudiation of those contractual obligations. The CA further held that petitioners were afforded the opportunity to be heard through the comments and oppositions they filed. Lastly, the appellate court ruled that the SEC en banc may rely on the factual findings of the Hearing Officer; thus, it need not make its own independent findings unless clear error has been committed.

The dispositive portion of the July 16, 2004 Decision of the CA reads:

WHEREFORE, premises considered, the present petition is hereby DENIED DUE COURSE and accordingly DISMISSED for lack of merit. The challenged En Banc Resolution dated November 11, 2000 of the Securities and Exchange Commission, affirming the Orders dated October 10, 2000 and April 26, 2001 of the SEC Hearing Panel in SEC Case No. 05-00-609, is hereby AFFIRMED.[17]

Petitioners' motion for reconsideration was denied through the October 1, 2004 CA Resolution. Hence, we have this petition.

The Issues

Petitioners assign the following errors[18] on the appellate court:

I

Respondent court committed serious error in ruling that the Rules does not preclude a solvent corporation or debtor to file a petition for rehabilitation instead of just a petition for suspension of payments.

II

Respondent court committed serious error in ruling that all the grounds for the opposition raised by the consortium of creditor banks have been duly heard and resolved by the Hearing Panel in its October 10, 2000 order and that there is no grave abuse of discretion on the part of the Hearing Panel when it appointed an interim receiver pursuant to Section 4-4.

III

Respondent court committed serious error in holding that the filing of a motion to override the objections against the Rehabilitation Plan by any class of creditor is not an absolute requirement nor is it a precondition for the Commission to resolve the objections so filed by the creditors.

IV

Respondent court committed serious error in ruling that the legal consequence of rehabilitation proceedings is merely a temporary suspension of such payments of obligations falling due by the distressed corporation and not cancellation or repudiation of those contractual obligations.

V

Respondent court committed serious error in ruling that the Commission correctly ruled on the issue of the alleged impairment of contracts arising from the suspension order and approval of the Rehabilitation Plan.

VI

Respondent court committed serious error in finding that petitioners as creditors and mortgagees cannot, by contractual commitments imposed on their borrowers-mortgagors, defeat the purpose of the legislation by rendering nugatory the supervisory and regulatory power of the SEC over private corporations, partnerships and associations under existing laws.

VII

Respondent court committed serious error in ruling that the SEC in this case not only applied liberally the provisions of the rules of procedure on corporate recovery, afforded sufficient opportunity to be heard on all the creditors, both secured and unsecured individual creditors, but also carefully weighed their competing and conflicting interests with the end in view of maintaining the financial viability of the petitioning corporations and preserving its assets for the protection of all creditors.

VIII

Respondent court committed serious error in ruling that the decision and resolution in question should be affirmed and that there is no delay, arbitrariness, serious disregard of the law and rules, and whimsical or oppressive exercise of judgment on the part of the SEC en banc and the Hearing Panel.

IX

It is error for respondent appellate court not to grant petitioners' prayer to dismiss the petition for rehabilitation

on the ground that the consent of the administrative agencies concerned was not obtained before the filing of said petition.

On April 25, 2007, PNB sold the account of ASBDC to Golden Dragon Star Equities, Inc. and its assignee, Opal Portfolio Investments, Inc. (Opal). PNB then requested this Court to be substituted by Opal. Meanwhile, respondents ASB Holdings, ASB Realty Corporation, ASB Development Corporation, and ASB Land have changed their corporate names to St. Francis Square Holdings, Inc., St. Francis Square Realty Corporation, St. Francis Square Development Corporation, and St. Francis Square Land, Inc., respectively.

On February 27, 2007, the First Division of this Court promulgated its Decision in *Metropolitan Bank & Trust Company v. ASB Holdings, Inc.* under G.R. No. 166197.[19] This case dealt with the petition filed by Metrobank, a member of the consortium of creditor banks.

The Court's Ruling

We affirm the ruling of the appellate court.

Petition for Suspension of Payments vis-à-vis Petition for Rehabilitation

Anent the issue regarding the appropriate remedy available to private respondents, petitioners argue that a petition for rehabilitation and suspension of payments cannot be filed without previously filing a petition for suspension of payments since these refer to different reliefs under the Rules which provides:

RULE III, Section 3-1. Suspension of Payments.--Any debtor which possesses sufficient property to cover all its debts but foresees the impossibility of meeting them when they respectively fall due may petition the Commission that it be declared in a state of suspension of payments.

RULE IV, Section 4-1. Who may petition.--A debtor which is insolvent because its assets are not sufficient to cover its liabilities, or which is technically insolvent under Section 3-12 of these Rules, but which may still be rescued or revived through the institution of some changes in its management, organization, policies, strategies, operations, or finances, may petition the Commission to be placed under rehabilitation.

Petitioners argue that Sec. 3-1 refers to debtors with sufficient property to cover its debts; thus, it refers to solvent debtors. Sec. 4-1, on the other hand, refers to debtors with insufficient assets to cover its liabilities, that is, debtors who are insolvent or technically insolvent. The former falls under the rules on suspension of payments while the latter falls under the rules on rehabilitation. Petitioners then conclude that a solvent corporation, such as private respondents, cannot file a petition for rehabilitation. Also, the ASB Group cannot be considered technically insolvent under Secs. 3-12 and 3-13 which state:

Section 3-12. Technical insolvency of petitioner.--If it is established that the inability of the petitioner to pay, although temporary, will last for a period longer than one (1) year from the filing of the petition, the petitioner shall be considered technically insolvent and the petition shall be dismissed accordingly.

Section 3-13. Supervening insolvency or violation of Suspension Order.--If at anytime during the pendency of the proceedings, the petitioner has become or is shown to be insolvent, whether actual or technical, or that it has violated any of the conditions of the suspension order or has failed to make payments on its obligations in accordance with the approved Repayment Schedule, the Commission shall terminate the proceedings and dismiss the petition. Instead of terminating the proceedings, however, the Commission may, upon motion, treat the petition as one for rehabilitation of the debtor. Thereupon, the pertinent provisions of the succeeding Rule shall govern the proceedings.

Petitioners point out that the foregoing rules prescribe a determination by the SEC that the ailing corporation's inability to pay will last more than one year from the filing of the petition for suspension of payments. Petitioners

conclude that technical insolvency only arises one year after the petition for suspension of payments had been filed; therefore, the SEC committed a serious error when it entertained the ASB Group's petition for rehabilitation without a previous finding of technical insolvency.

To further support their theory, petitioners quoted Sec. 4-2(g) as follows:

Section 4-2. Contents of the petition.--The petition filed by the debtor must be verified and must set forth with sufficient particularity all the following material facts:

x x x x

(g) the status of any Repayment Schedule if one has been approved by the Commission under the preceding Rule.

According to petitioners, the mere mention of a Repayment Schedule under Rule IV on Rehabilitation only proves that technical insolvency can only arise from or initiated by the filing of a petition for suspension of payments under Rule III.

Such interpretation of the Rules deserves no merit.

Petitioners raise issues which mainly relate to technical insolvency; hence, we will limit our interpretation of the rules based on the aforequoted sections. Based on the foregoing, we can deduce the following:

- (1) A corporation which has sufficient assets to cover its liabilities but foresees its inability to pay its obligations as they fall due may file a petition for suspension of payments under Rule III of the Rules (Sec. 3-1);
- (2) If the SEC finds that the corporation's inability to pay will last more than one year from the filing of the petition for suspension of payments, that is, the corporation becomes technically insolvent, the petition shall be dismissed (Sec. 3-12);
- (3) If the corporation is shown or actually becomes technically insolvent anytime during the pendency of the proceedings (supervening technical insolvency), the SEC may either terminate the proceedings or it may, upon motion, treat the petition as one for rehabilitation (Sec. 3-13); and
- (4) If from the start, a corporation which has enough assets foresees its inability to meet its obligations for more than one year,
i.e., existing technical insolvency, it may file a petition for rehabilitation under Rule IV, Sec. 4-1.

A reading of Sec. 4-1 shows that there are two kinds of insolvency contemplated in it: (1) actual insolvency, i.e., the corporation's assets are not enough to cover its liabilities; and (2) technical insolvency defined under Sec. 3-12, i.e., the corporation has enough assets but it foresees its inability to pay its obligations for more than one year.

In the case at bar, the ASB Group filed with the SEC a petition for rehabilitation with prayer for suspension of actions and proceedings pending rehabilitation. Contrary to petitioners' arguments, the mere fact that the ASB Group averred that it has sufficient assets to cover its obligations does not make it "solvent" enough to prevent it from filing a petition for rehabilitation. A corporation may have considerable assets but if it foresees the impossibility of meeting its obligations for more than one year, it is considered as technically insolvent. Thus, at the first instance, a corporation may file a petition for rehabilitation--a remedy provided under Sec. 4-1.

When Sec. 4-1 mentioned technical insolvency under Sec. 3-12, it was referring to the definition of technical insolvency in the said section; it was not requiring a previous filing of a petition for suspension of payments which petitioners would have us believe.

Petitioners harp on the SEC's failure to examine whether the ASB Group is technically insolvent. They contend that the SEC should wait for a year after the filing of the petition for suspension of payments when technical insolvency may or may not arise. This is erroneous. The period mentioned under Sec. 3-12, "longer than one year from the filing of the petition," does not refer to a year-long waiting period when the SEC can finally say that the ailing corporation is technically insolvent to qualify for rehabilitation. The period referred to the corporation's inability to pay its obligations; when such inability extends beyond one year, the corporation is considered technically insolvent. Said inability may be established from the start by way of a petition for rehabilitation, or it may be proved during the proceedings for suspension of payments, if the latter was the first remedy chosen by the ailing corporation. If the corporation opts for a direct petition for rehabilitation on the ground of technical insolvency, it should show in its petition and later prove during the proceedings that it will not be able to meet its obligations for longer than one year from the filing of the petition.

As regards the status of the Repayment Schedule required to be attached to the petition for rehabilitation (Sec. 4-2[g]), this requirement is conditioned on whether one was approved by the SEC in the first place. If there is none, as in the case of a petition for rehabilitation due to technical insolvency directly filed under Rule IV, Sec. 4-1, then there is no status report to submit with the petition.

Appointment of an Interim Receiver

Petitioners impute error on the part of the SEC in appointing an interim receiver since, allegedly, the requirements for it have not been met. Petitioners, however, assume that private respondents were not entitled to file a petition for rehabilitation. As previously discussed, private respondents may file a petition for rehabilitation for being technically insolvent. Once the petition is filed, the appointment of an interim receiver becomes automatic. As pertinently provided under the Rules:

Section 4-4. Effect of filing of the petition.--Immediately upon the filing of the petition, the Commission shall issue an Order (a) appointing an Interim Receiver and fixing his bond; (b) suspending all actions and proceedings for claims against the debtor; (c) prohibiting the debtor from selling, encumbering, transferring or disposing in any manner any of its properties except in the normal course of business in which the debtor is engaged; (d) prohibiting the debtor from making any payment of its liabilities outstanding as of the date of filing of the petition; (e) directing the payment in full of all administrative expenses incurred after the filing of the petition; (f) fixing the initial hearing on the petition not later than forty-five (45) days from the filing thereof; (g) directing the debtor to publish the Order once a week for two consecutive weeks in a newspaper of general circulation in the Philippines; and (h) directing the debtor to serve on each of the parties on the list of creditors the following documents at least ten days before the date of the said hearing:

- A copy of the Order;
- A copy of the petition;
- A copy of the Schedule of Debts and Liabilities; and
- A notification that copies of the other documents filed with the Commission may be obtained therefrom or from the Interim Receiver.

Petitioners assert that there two kinds of receivers that can be appointed: a rehabilitation receiver or an interim receiver. A rehabilitation receiver under PD 902-A, Sec. 6 may only be appointed when there is a showing that (1) the receiver is necessary in order to preserve the rights of the parties-litigants; and/or (2) in order to protect the interest of the investing public and creditors. In contrast, the appointment of an interim receiver is automatic from the time the petition for rehabilitation is filed; there are no other standards that need to be met. According to *Rizal Commercial Banking Corporation v. Intermediate Appellate Court*, a petition for rehabilitation does not

necessarily result in the appointment of a rehabilitation receiver.[20] Prior to the appointment of a rehabilitation receiver or management committee, as the case may be, the right of secured creditors to foreclose mortgages cannot be denied. Also, since PD 902-A does not provide for the appointment of an interim receiver, then the Rules of Procedure on Corporate Recovery, an administrative issuance, went beyond the law it seeks to implement.

As found by the appellate court, the appointment of an interim receiver should be understood as a necessary and urgent step to protect the interests of both creditors and stockholders of the petitioning corporations, particularly the assets and business operations during the pendency of the proceedings, and to ensure the viability and success of the rehabilitation plan as eventually implemented.[21]

Motion to Override the Creditors' Objections

Petitioners insist that the Rehabilitation Plan should not have been approved by the SEC over the objection by the secured creditors without the filing of a motion to override the objections filed by private respondents. This is in accordance with Sec. 4-20 which provide:

Section 4-20. Approval of the Rehabilitation Plan.--No Rehabilitation Plan shall be approved by the Commission if opposed by a majority of any class of creditors. The Commission may, upon motion, however, override said disapproval if such is manifestly unreasonable. The Rehabilitation Plan shall be deemed ipso facto disapproved and the petition dismissed if the Commission fails to grant the motion to override within thirty (30) days from the time it is submitted for resolution.

The CA held that the filing of a motion is not a precondition for the SEC to resolve the objections filed by the creditors, as evident in the word "may." We disagree. The requirement of a motion by the petitioning corporation is essential in enabling the SEC to decide on the proposed rehabilitation plan. The words "upon motion" were deliberately added to emphasize this requirement. In the case bar, while private respondents failed to file a motion to override the creditors' objections, nevertheless, they were able to file a reply to the opposition of the consortium of creditor banks. Presumably, this reply addressed the objections of the consortium. Considering that procedural rules should be liberally interpreted, we find said pleading as tantamount to filing a motion required by Sec. 4-20.

Right Against Non-Impairment of Contracts

Petitioners contend that the SEC's approval of the Rehabilitation Plan impairs the MTI by forcing them to release the real properties secured in their favor to become part of the asset pool. They argue that the SEC's approval of the Rehabilitation Plan is a state action that impairs the remedies available to petitioners under the MTI, which essentially abrogates the contract itself.

In the Metropolitan Bank & Trust Company Decision in G.R. No. 166197,[22] Metrobank likewise questioned the approval of the Rehabilitation Plan by the SEC and the CA, particularly the provisions relating to the payment by dacion en pago and waiver of interests and penalties. Metrobank asserted that the Rehabilitation Plan compelled it to release part of the collateral and accept the mortgaged properties as payment by dacion en pago based on the ASB Group's transfer values, violating the constitutional right to non-impairment of contracts.

On this issue, we adopt the ruling of the First Division in Metropolitan Bank & Trust Company, to wit:

We are not convinced that the approval of the Rehabilitation Plan impairs petitioner bank's lien over the mortgaged properties. Section 6 [c] of P.D. No. 902-A provides that "upon appointment of a management committee, rehabilitation receiver, board or body, pursuant to this Decree, all actions for claims against corporations, partnerships or associations under management or receivership pending before any court, tribunal, board or body shall be suspended."

By that statutory provision, it is clear that the approval of the Rehabilitation Plan and the appointment of a rehabilitation receiver merely suspend the actions for claims against respondent corporations. Petitioner bank's preferred status over the unsecured creditors relative to the mortgage liens is retained, but the enforcement of such preference is suspended. The loan agreements between the parties have not been set aside and petitioner bank may still enforce its preference when the assets of ASB Group of Companies will be liquidated. Considering that the provisions of the loan agreements are merely suspended, there is no impairment of contracts, specifically its lien in the mortgaged properties.

As we stressed in *Rizal Commercial Banking Corporation v. Intermediate Appellate Court*, such suspension "shall not prejudice or render ineffective the status of a secured creditor as compared to a totally unsecured creditor," for what P.D. No. 902-A merely provides is that all actions for claims against the distressed corporation, partnership or association shall be suspended. This arrangement provided by law is intended to give the receiver a chance to rehabilitate the corporation if there should still be a possibility for doing so, without being unnecessarily disturbed by the creditors' actions against the distressed corporation. However, in the event that rehabilitation is no longer feasible and the claims against the distressed corporation would eventually have to be settled, the secured creditors, like petitioner bank, shall enjoy preference over the unsecured creditors.[23]

Contrary to petitioners' belief, they are not forced to accept the terms of the Rehabilitation Plan. As held in *Metropolitan Bank & Trust Company*, they are merely proposals for the creditors to accept.

Due Process and the Regulatory Power of the SEC

Petitioners contend that private respondents were not entitled to the suspension order and its extension if opposed by a majority class of creditors. The consortium, which has a total exposure of PhP 1.8 billion, was allegedly deprived of substantive due process when the SEC issued and extended the suspension order despite the objection of the creditor banks. The right to due process was again allegedly violated when the Hearing Panel set the Rehabilitation Plan for hearing without ruling on the issues raised in petitioners' Comment/Opposition. Furthermore, according to private respondents, ASBDC, the borrower in the MTI, is not insolvent; thus, its inclusion in the petition for rehabilitation was not proper. As regards the SEC en banc, private respondents claimed that the three-year delay in acting on the petition for review filed by the consortium amounted to a denial of due process and caused undue damage to the creditors.

Petitioners' arguments have no merit. The appellate court correctly ruled that petitioners were given the opportunity to be heard. They filed their Comment/Opposition and a petition for review before the SEC en banc. Due process is satisfied when the parties are afforded fair and reasonable opportunity to explain their side of the controversy or an opportunity to move for a reconsideration of the action or ruling complained of.[24] Also, the SEC en banc is not required to come up with its own findings since findings of the Hearing Officer shall remain undisturbed unless the SEC en banc finds manifest errors. Sec. 16-7 of the Rules also states that proceedings before the SEC en banc shall be summary in nature.

The purpose of rehabilitation proceedings is to enable the company to gain new lease on life and thereby allows creditors to be paid their claims from its earnings. Rehabilitation contemplates a continuance of corporate life and activities in an effort to restore and reinstate the financially distressed corporation to its former position of successful operation and solvency. This is in consonance with the State's objective to promote a wider and more meaningful equitable distribution of wealth to protect investments and the general public.[25] It is precisely based on these principles that the SEC decided the petition for rehabilitation. We agree with the findings of the appellate court:

x x x In holding that the oppositions of the creditor banks are unreasonable, the SEC took into consideration

the fact that compared to the creditor banks who have existing mortgages with private respondents, the 725 individually affected unsecured creditors with a much higher stake in their combined claims of P4 Billion, the SEC found it prejudicial to disapprove the Rehabilitation Plan and thereby allow the creditor banks to foreclose the mortgages and sell the fixed assets at prices lower than the market value, a prospect that will deprive the unsecured creditors of any hope of being paid while the corporations will eventually become insolvent unable to pay its obligations to the greater number of unsecured creditors.

In view of the urgency of the situation and the serious prejudice that will result to other investors and creditors and to the public in general, the SEC opted to proceed decisively and promptly in approving the petition for rehabilitation filed by private respondents in order to continue the rehabilitation process and keep the companies financial afloat, a measure ultimately aimed at protecting the interest of the larger number of unsecured creditors. Under such factual scenario, delay is farthest from the minds of all those concerned particularly the Hearing Panel and the unsecured creditors. The longer the approval of the rehabilitation plan is delayed, the greater the peril becomes that the assets of the corporations will be dissipated and their business operations jeopardized. The view has been expressed that the power of the SEC to issue injunctive relief in these cases should be upheld by the courts as otherwise "a distressed company would be exposed to grave danger that may precipitate its untimely demise, the very evil sought by a suspension of payments." [26]

In the exercise of judicial review, the function of the court is to determine whether the administrative agency has not been arbitrary or whimsical in the exercise of its power given the facts and the law. Absent such unreasonable or unlawful exercise of power, courts should not interfere. In this case, such arbitrariness is absent.

WHEREFORE, this petition is DENIED. The July 16, 2004 Decision and October 1, 2004 Resolution of the CA in CA-G.R. SP No. 82800 are AFFIRMED. Costs against petitioners.

SO ORDERED.

Quisumbing, (Chairperson), Carpio Morales, Tinga and Brion, JJ., concur.

[1] Rollo, pp. 282-304. Penned by Associate Justice Martin S. Villarama, Jr. and concurred in by Associate Justices Edgardo F. Sundiam and Japar B. Dimaampao.

[2] Id. at 306.

[3] Id. at 201-204.

[4] Id. at 166-179.

[5] Id. at 185-188.

[6] Id. at 87-125.

[7] Id. at 283.

[8] Id. at 670.

[9] Id. at 283.

[10] Id. at 284.

[11] The Hearing Panel was composed of Eugenio E. Reyes (Chairperson), Rosalina M. Tividad-Tesorio, and Irene V.C. Isidoro-Torres (members).

[12] Rollo, pp. 283-284.

[13] Id. at 285.

[14] Id. at 286-287.

[15] Supra note 5, at 187-188.

[16] Supra note 3, at 203-204.

[17] Supra note 1, at 303.

[18] Rollo, pp. 27-28.

[19] 517 SCRA 1.

[20] G.R. No. 74851, December 9, 1999, 320 SCRA 279, 289.

[21] Supra note 1, at 295.

[22] Supra note 19.

[23] Supra note 19, at 11-12.

[24] Roxas v. Vasquez, G.R. No. 114944, June 19, 2001, 358 SCRA 636, 645.

[25] Metropolitan Bank & Trust Company, supra note 19, at 15; citing Rubberworld (Phils.), Inc. v. National Labor Relations Commission, 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; and PD 902-A, as amended, first "Whereas" clause.

[26] Supra note 1, at 302.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.