

MAJORITY STOCKHOLDERS OF RUBY INDUSTRIAL CORPORATION, PETITIONERS, VS. MIGUEL LIM, IN HIS PERSONAL CAPACITY AS STOCKHOLDER OF RUBY INDUSTRIAL CORPORATION AND REPRESENTING THE MI...

G.R. No. 165887. June 06, 2011

Ponente: VILLARAMA, JR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-165887/>

VILLARAMA, JR., J.:

This case is brought to us on appeal for the fourth time, involving the same parties and interests litigating on issues arising from rehabilitation proceedings initiated by Ruby Industrial Corporation wayback in 1983.

Following is the factual backdrop of the present controversy, as culled from the records and facts set forth in the ponencia of Chief Justice Reynato S. Puno in *Ruby Industrial Corporation v. Court of Appeals*.^[1]

The Antecedents

Ruby Industrial Corporation (RUBY) is a domestic corporation engaged in glass manufacturing. Reeling from severe liquidity problems beginning in 1980, RUBY filed on December 13, 1983 a petition for suspension of payments with the Securities and Exchange Commission (SEC) docketed as SEC Case No. 2556. On December 20, 1983, the SEC issued an order declaring RUBY under suspension of payments and enjoining the disposition of its properties pending hearing of the petition, except insofar as necessary in its ordinary operations, and making payments outside of the necessary or legitimate expenses of its business.

On August 10, 1984, the SEC Hearing Panel created the management committee (MANCOM) for RUBY, composed of representatives from Allied Leasing and Finance Corporation (ALFC), Philippine Bank of Communications (PBCOM), China Banking Corporation (China Bank), Pilipinas Shell Petroleum Corporation (Pilipinas Shell), and RUBY represented by Mr. Yu Kim Giang. The MANCOM was tasked to perform the following functions: (1) undertake the management of RUBY; (2) take custody and control over all existing assets and liabilities of RUBY; (3) evaluate RUBY's existing assets and liabilities, earnings and operations; (4) determine the best way to salvage and protect the interest of its investors and creditors; and (5) study, review and evaluate the proposed rehabilitation plan for RUBY.

Subsequently, two (2) rehabilitation plans were submitted to the SEC: the BENHAR/RUBY Rehabilitation Plan of the majority stockholders led by Yu Kim Giang, and the Alternative Plan of the minority stockholders represented by Miguel Lim (Lim).

Under the BENHAR/RUBY Plan, Benhar International, Inc. (BENHAR) -- a domestic corporation engaged in the importation and sale of vehicle spare parts which is wholly owned by the Yu family and headed by Henry Yu, who is also a director and majority stockholder of RUBY -- shall lend its P60 million credit line in China Bank to RUBY, payable within ten (10) years. Moreover, BENHAR shall purchase the credits of RUBY's creditors and mortgage RUBY's properties to obtain credit facilities for RUBY. Upon approval of the rehabilitation plan,

BENHAR shall control and manage RUBY's operations. For its service, BENHAR shall receive a management fee equivalent to 7.5% of RUBY's net sales.

The BENHAR/RUBY Plan was opposed by 40% of the stockholders, including Lim, a minority shareholder of RUBY. ALFC, the biggest unsecured creditor of RUBY and chairman of the management committee, also objected to the plan as it would transfer RUBY's assets beyond the reach and to the prejudice of its unsecured creditors.

On the other hand, the Alternative Plan of RUBY's minority stockholders proposed to: (1) pay all RUBY's creditors without securing any bank loan; (2) run and operate RUBY without charging management fees; (3) buy-out the majority shares or sell their shares to the majority stockholders; (4) rehabilitate RUBY's two plants; and (5) secure a loan at 25% interest, as against the 28% interest charged in the loan under the BENHAR/RUBY Plan.

Both plans were endorsed by the SEC to the MANCOM for evaluation.

On October 28, 1988, the SEC Hearing Panel approved the BENHAR/RUBY Plan. The minority stockholders thru Lim appealed to the SEC En Banc which, in its November 15, 1988 Order, enjoined the implementation of the BENHAR/RUBY Plan. On December 20, 1988 after the expiration of the temporary restraining order (TRO), the SEC En Banc granted the writ of preliminary injunction against the enforcement of the BENHAR/RUBY Plan. BENHAR, Henry Yu, RUBY and Yu Kim Giang questioned the issuance of the writ in their petition filed in the Court of Appeals (CA), docketed as CA-G.R. SP No. 16798. The CA denied their appeal.[2] Upon elevation to this Court (G.R. No. L-88311), we issued a minute resolution dated February 28, 1990 denying the petition and upholding the injunction against the implementation of the BENHAR/RUBY Plan.

Meanwhile, BENHAR paid off Far East Bank & Trust Company (FEBTC), one of RUBY's secured creditors. By May 30, 1988, FEBTC had already executed a deed of assignment of credit and mortgage rights in favor of BENHAR. BENHAR likewise paid the other secured creditors who, in turn, assigned their rights in favor of BENHAR. These acts were done by BENHAR despite the SEC's TRO and injunction and even before the SEC Hearing Panel approved the BENHAR/RUBY Plan on October 28, 1988.

ALFC and Miguel Lim moved to nullify the deeds of assignment executed in favor of BENHAR and cite the parties thereto in contempt for willful violation of the December 20, 1983 SEC order enjoining RUBY from disposing its properties and making payments pending the hearing of its petition for suspension of payments. They also charged that in paying off FEBTC's credits, FEBTC was given undue preference over the other creditors of RUBY. Acting on the motions, the SEC Hearing Panel nullified the deeds of assignment executed by RUBY's creditors in favor of BENHAR and declared the parties thereto guilty of indirect contempt. BENHAR and RUBY appealed to the SEC En Banc which denied their appeal. BENHAR and RUBY joined by Henry Yu and Yu Kim Giang appealed to the CA (CA-G.R. SP No. 18310). By Decision[3] dated August 29, 1990, the CA affirmed the SEC ruling nullifying the deeds of assignment. The CA also declared its decision final and executory as to RUBY and Yu Kim Giang for their failure to file their pleadings within the reglementary period. By Resolution dated August 26, 1991 in G.R. No. 96675,[4] this Court affirmed the CA's decision.

Earlier, on May 29, 1990, after the SEC En Banc enjoined the implementation of BENHAR/RUBY Plan, RUBY filed with the SEC En Banc an ex parte petition to create a new management committee and to approve its revised rehabilitation plan (Revised BENHAR/RUBY Plan). Under the revised plan, BENHAR shall receive P34.068 million of the P60.437 Million credit facility to be extended to RUBY, as reimbursement for BENHAR's payment to some of RUBY's creditors. The SEC En Banc directed RUBY to submit its revised rehabilitation plan to its creditors for comment and approval while the petition for the creation of a new management committee was

remanded for further proceedings to the SEC Hearing Panel. The Alternative Plan of RUBY's minority stockholders was also forwarded to the hearing panel for evaluation.

On April 26, 1991, over ninety percent (90%) of RUBY's creditors objected to the Revised BENHAR/RUBY Plan and the creation of a new management committee. Instead, they endorsed the minority stockholders' Alternative Plan. At the hearing of the petition for the creation of a new management committee, three (3) members of the original management committee (Lim, ALFC and Pilipinas Shell) opposed the Revised BENHAR/RUBY Plan on grounds that: (1) it would legitimize the entry of BENHAR, a total stranger, to RUBY as BENHAR would become the biggest creditor of RUBY; (2) it would put RUBY's assets beyond the reach of the unsecured creditors and the minority stockholders; and (3) it was not approved by RUBY's stockholders in a meeting called for the purpose.

Notwithstanding the objections of 90% of RUBY's creditors and three members of the MANCOM, the SEC Hearing Panel approved on September 18, 1991 the Revised BENHAR/RUBY Plan and dissolved the existing management committee. It also created a new management committee and appointed BENHAR as one of its members. In addition to the powers originally conferred to the management committee under Presidential Decree (P.D.) No. 902-A, the new management committee was tasked to oversee the implementation by the Board of Directors of the revised rehabilitation plan for RUBY.

The original management committee (MANCOM), Lim and ALFC appealed to the SEC En Banc which affirmed the approval of the Revised BENHAR/RUBY Plan and the creation of a new management committee on July 30, 1993. To ensure that the management of RUBY will not be controlled by any group, the SEC appointed SEC lawyers Ruben C. Ladia and Teresita R. Siao as additional members of the new management committee. Further, it declared that BENHAR's membership in the new management committee is subject to the condition that BENHAR will extend its credit facilities to RUBY without using the latter's assets as security or collateral.

Lim, ALFC and MANCOM moved for reconsideration while RUBY and BENHAR asked the SEC to reconsider the portion of its Order prohibiting BENHAR from utilizing RUBY's assets as collateral. On October 15, 1993, the SEC denied the motion of Lim, ALFC and the original management committee but granted RUBY and BENHAR's motion and allowed BENHAR to use RUBY's assets as collateral for loans, subject to the approval of the majority of all the members of the new management committee. Lim, ALFC and MANCOM appealed to the CA (CA-G.R. SP Nos. 32404, 32469 & 32483) which by Decision [5] dated March 31, 1995 set aside the SEC's approval of the Revised BENHAR/RUBY Plan and remanded the case to the SEC for further proceedings. The CA ruled that the revised plan circumvented its earlier decision (CA-G.R. SP No. 18310) nullifying the deeds of assignment executed by RUBY's creditors in favor of BENHAR. Since under the revised plan, BENHAR was to receive P34.068 Million of the P60.437 Million credit facility to be extended to RUBY, as settlement for its advance payment to RUBY's seven (7) secured creditors, such payments made by BENHAR under the void Deeds of Assignment, in effect were recognized as payable to BENHAR under the revised plan. The motion for reconsideration filed by BENHAR and RUBY was likewise denied by the CA.[6]

Undaunted, RUBY and BENHAR filed a petition for review in this Court (G.R. Nos. 124185-87 entitled *Ruby Industrial Corporation v. Court of Appeals*) alleging that the CA gravely abused its discretion in substituting its judgment for that of the SEC, and in allowing Lim, ALFC and MANCOM to file separate petitions prepared by lawyers representing themselves as belonging to different firms. By Decision [7] dated January 20, 1998, we sustained the CA's ruling that the Revised BENHAR/RUBY Plan contained provisions which circumvented its final decision in CA-G.R. SP No. 18310, nullifying the deeds of assignment of credits and mortgages executed by RUBY's creditors in favor of BENHAR, as well as this Court's Resolution in G.R. No. 96675, affirming the said CA's decision. We thus held:

...Specifically, the Revised BENHAR/RUBY Plan considered as valid the advance payments made by BENHAR in favor of some of RUBY's creditors. The nullity of BENHAR's unauthorized dealings with RUBY's creditors is settled. The deeds of assignment between BENHAR and RUBY's creditors had been categorically declared void by the SEC Hearing Panel in two (2) orders issued on January 12, 1989 and March 15, 1989. x x x

x x x x

These orders were upheld by the SEC en banc and the Court of Appeals. In CA-G.R. SP No. 18310, the Court of Appeals ruled as follows:

"x x x x x x x x

"1) x x x when the Deed of Assignment was executed on May 30, 1988 by and between Ruby Industrial Corp., Benhar International, Inc., and FEBTC, the Rehabilitation Plan proposed by petitioner Ruby Industrial Corp. for Benhar International, Inc. to assume all petitioner's obligation has not been approved by the SEC. The Rehabilitation Plan was not approved until October 28, 1988. There was a willful and blatant violation of the SEC order dated December 20, 1983 on the part of petitioner Ruby Industrial Corp., represented by Yu Kim Giang, by Benhar International, Inc., represented by Henry Yu and by FEBTC....

"2) The magnitude and coverage of the transactions involved were such that Yu Kim Giang and the other signatories cannot feign ignorance or pretend lack of knowledge thereto in view of the fact that they were all signatories to the transaction and privy to all the negotiations leading to the questioned transactions. In executing the Deeds of Assignment, the petitioners totally disregarded the mandate contained in the SEC order not to dispose the properties of Ruby Industrial Corp. in any manner whatsoever pending the approval of the Rehabilitation Plan and rendered illusory the SEC efforts to rehabilitate the petitioner corporation to the best interests of all the creditors.

"3) The assignments were made without prior approval of the Management Committee created by the SEC in an Order dated August 10, 1984. Under Sec. 6, par. d, sub. par. (2) of P.D. 902-A as amended by P.D. 1799, the Management Committee, rehabilitation receiver, board or body shall have the power to take custody and control over all existing assets of such entities under management notwithstanding any provision of law, articles of incorporation or by-law to the contrary. The SEC therefore has the power and authority, through a Management Committee composed of petitioner's creditors or through itself directly, to declare all assignment of assets of the petitioner Corporation declared under suspension of payments, null and void, and to conserve the same in order to effect a fair, equitable and meaningful rehabilitation of the insolvent corporation."

"4) x x x. The acts for which petitioners were held in indirect contempt by the SEC arose from the failure or willful refusal by petitioners to obey the lawful order of the SEC not to dispose of any of its properties in any manner whatsoever without authority or approval of the SEC. The execution of the Deeds of Assignment tend to defeat or obstruct the administration of justice. Such acts are offenses against the SEC because they are calculated to embarrass, hinder and obstruct the tribunal in the administration of justice or lessen its authority.

"x x x

Even the SEC en banc, in its July 30, 1993 Order affirming the approval of the Revised BENHAR/RUBY Plan, has acknowledged the invalidity of the subject deeds of assignment. However, to justify it's approval of the plan and the appointment of BENHAR to the new management committee, it gave the lame excuse that BENHAR became RUBY's creditor for having paid RUBY's debts. x x x

x x x x

For its part, the Court of Appeals noted that the approved Revised BENHAR/RUBY Plan gave undue preference to BENHAR. The records, indeed, show that BENHAR's offer to lend its credit facility in favor of RUBY is

conditioned upon the payment of the amount it advanced to RUBY's creditors, x x x

x x x x

In fact, BENHAR shall receive P34.068 Million out of the P60.437 Million credit facility to be extended to RUBY for the latter's rehabilitation.

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. When a distressed company is placed under rehabilitation, the appointment of a management committee follows to avoid collusion between the previous management and creditors it might favor, to the prejudice of the other creditors. All assets of a corporation under rehabilitation receivership are held in trust for the equal benefit of all creditors to preclude one from obtaining an advantage or preference over another by the expediency of attachment, execution or otherwise. As between the creditors, the key phrase is equality in equity. Once the corporation threatened by bankruptcy is taken over by a receiver, all the creditors ought to stand on equal footing. Not any one of them should be paid ahead of the others. This is precisely the reason for suspending all pending claims against the corporation under receivership.[8] (Additional emphasis supplied.)

Aside from the undue preference that would have been given to BENHAR under the Revised BENHAR/RUBY Plan, we also found RUBY's dealing with BENHAR highly irregular and its proposed financing scheme more costly and ultimately prejudicial to RUBY. Thus:

Parenthetically, BENHAR is a domestic corporation engaged in importing and selling vehicle spare parts with an authorized capital stock of thirty million pesos. Yet, it offered to lend its credit facility in the amount of sixty to eighty million pesos to RUBY. It is to be noted that BENHAR is not a lending or financing corporation and lending its credit facilities, worth more than double its authorized capitalization, is not one of the powers granted to it under its Articles of Incorporation. Significantly, Henry Yu, a director and a majority stockholder of RUBY is, at the same time, a stockholder of BENHAR, a corporation owned and controlled by his family. These circumstances render the deals between BENHAR and RUBY highly irregular.

x x x x

Moreover, when RUBY initiated its petition for suspension of payments with the SEC, BENHAR was not listed as one of RUBY's creditors. BENHAR is a total stranger to RUBY. If at all, BENHAR only served as a conduit of RUBY. As aptly stated in the challenged Court of Appeals decision:

"Benhar's role in the Revised Benhar/Ruby Plan, as envisioned by the majority stockholders, is to contract the loan for Ruby and, serving the role of a financier, relend the same to Ruby. Benhar is merely extending its credit line facility with China Bank, under which the bank agrees to advance funds to the company should the need arise. This is unlikely a loan in which the entire amount is made available to the borrower so that it can be used and programmed for the benefit of the company's financial and operational needs. Thus, it is actually China Bank which will be the source of the funds to be relented to Ruby. Benhar will not shell out a single centavo of its own funds. It is the assets of Ruby which will be mortgaged in favor of Benhar. Benhar's participation will only make the rehabilitation plan more costly and, because of the mortgage of its (Ruby's) assets to a new creditor, will create a situation which is worse than the present. x x x"

We need not say more.[9] (Additional emphasis supplied.)

After the finality of the above decision, the SEC set the case for further proceedings.[10] On March 14, 2000, Bank of the Philippine Islands (BPI), one of RUBY's secured creditors, filed a Motion to Vacate Suspension Order[11] on grounds that there is no existing management committee and that no decision has been rendered in the case for more than 16 years already, which is beyond the period mandated by Sec. 3-8 of the Rules of

Procedure on Corporate Recovery. RUBY filed its opposition,[12] asserting that the MANCOM never relinquished its status as the duly appointed management committee as it resisted the orders of the second and third management committees subsequently created, which have been nullified by the CA and later this Court. As to the applicability of the cited rule under the Rules on Corporate Recovery, RUBY pointed out that this case was filed long before the effectivity of said rules. It also pointed out that the undue delay in the approval of the rehabilitation plan being due to the numerous appeals taken by the minority stockholders and MANCOM to the CA and this Court, from the SEC approval of the BENHAR/RUBY Plan. Since there have already been steps taken to finally settle RUBY's obligations with its creditors, it was contended that the application of the mandatory period under the cited provision would cause prejudice and injustice to RUBY.

It appears that even earlier during the pendency of the appeals in the CA, BENHAR and RUBY have performed other acts in pursuance of the BENHAR/RUBY Plan approved by the SEC.

On September 1, 1996, Lim received a Notice of Stockholders' Meeting scheduled on September 3, 1996 signed by a certain Mr. Edgardo M. Magtalas, the "Designated Secretary" of RUBY and stating the matters to be taken up in said meeting, which include the extension of RUBY's corporate term for another twenty-five (25) years and election of Directors.[13] At the scheduled stockholders' meeting of September 3, 1996, Lim together with other minority stockholders, appeared in order to put on record their objections on the validity of holding thereof and the matters to be taken therein. Specifically, they questioned the percentage of stockholders present in the meeting which the majority claimed stood at 74.75% of the outstanding capital stock of RUBY.

The aforesaid stockholders meeting was the subject of the Motion to Cite For Contempt[14] and Supplement to Motion to Cite For Contempt[15] filed by Lim before the CA where their petitions for review (CA-G.R. Nos. 32404, 32469 and 32483) were then pending. Lim argued that the majority stockholders claimed to have increased their shares to 74.75% by subscribing to the unissued shares of the authorized capital stock (ACS). Lim pointed out that such move of the majority was in implementation of the BENHAR/RUBY Plan which calls for capital infusion of P11.814 Million representing the unissued and unsubscribed portion of the present ACS of P23.7 Million, and the Revised BENHAR/RUBY Plan which proposed an additional subscription of P30 Million. Since the implementation of both majority plans have been enjoined by the SEC and CA, the calling of the special stockholders meeting by the majority stockholders clearly violated the said injunction orders. This circumstance certainly affects the determination of quorum, the voting requirements for corporate term extension, as well as the election of Directors pursuant to the July 30, 1993 Order and October 15, 1993 Resolution of the SEC enjoining not only the implementation of the revised plan but also the doing of any act that may render the appeal from the approval of the said plan moot and academic.

The aforementioned capital infusion was taken up by RUBY's board of directors in a special meeting[16] held on October 2, 1991 following the issuance by the SEC of its Order dated September 18, 1991[17] approving the Revised BENHAR/RUBY Plan and creating a new management committee to oversee its implementation. During the said meeting, the board asserted its authority and resolved to take over the management of RUBY's funds, properties and records and to demand an accounting from the MANCOM which was ordered dissolved by the SEC. The board thus resolved that:

The corporation be authorized to issue out of the unissued portion of the authorized capital stocks of the corporation in the form of common stocks 11.8134.00 [Million] after comparing this with the audited financial statement prepared by SGV as of December 31, 1982, to be subscribed and paid in full by the present stockholders in proportion to their present stockholding in the corporation on staggered basis starting October 28, December 27 then February 28 and April 28 as the last installment date at 25% for each period. It was also moved and seconded that should any of the stockholders fail to exercise their rights to buy the number of shares they are qualified to buy by making the first installment payment of 25% on or before October 13, 1991,

then the other stockholders may buy the same and that only when none of the present stockholders are interested in the shares may there be a resort to selling them by public auction.[18]

As reflected in the Minutes of the special board meeting, a representative of the absent directors (Tan Chai, Tomas Lim, Miguel Lim and Yok Lim) came to submit their letter addressed to the Chairman suggesting that said meeting be deferred until the September 18, 1991 SEC Order becomes final and executory. The directors present nevertheless proceeded with the meeting upon their belief that neither appeal nor motion for reconsideration can stay the SEC order.[19]

The resolution to extend RUBY's corporate term, which was to expire on January 2, 1997, was approved during the September 3, 1996 stockholders meeting, as recommended by the board of directors composed of Henry Yu (Chairman), James Yu, David Yukimteng, Harry L. Yu, Yu Kim Giang, Mary L. Yu and Vivian L. Yu. The board certified that said resolution was approved by stockholders representing two-thirds (2/3) of RUBY's outstanding capital stock.[20] Per Certification[21] dated August 31, 1995 issued by Yu Kim Giang as Executive Vice-President of RUBY, the majority stockholders own 74.75% of RUBY's outstanding capital stock as of October 27, 1991. The Amended Articles of Incorporation was filed with the SEC on September 24, 1996.[22]

On March 17, 2000, Lim filed a Motion[23] informing the SEC of acts being performed by BENHAR and RUBY through directors who were illegally elected, despite the pendency of the appeal before this Court questioning the SEC approval of the BENHAR/RUBY Plan and creation of a new management committee, and after this Court had denied their motion for reconsideration of the January 20, 1998 decision in G.R. Nos. 124185-87. Lim reiterated that before the matter of extension of corporate life can be passed upon by the stockholders, it is necessary to determine the percentage ownership of the outstanding shares of the corporation. The majority stockholders claimed that they have increased their shareholdings from 59.828% to 74.75% as a result of the illegal and invalid stockholders' meeting on September 3, 1996. The additional subscription of shares cannot be done as it implements the BENHAR/RUBY Plan against which an existing injunction is still effective based on the SEC Order dated January 6, 1989, and which was struck down under the final decision of this Court in G.R. Nos. 124185-87. Hence, the implementation of the new percentage stockholdings of the majority stockholders and the calling of stockholders' meeting and the subsequent resolution approving the extension of corporate life of RUBY for another twenty-five (25) years, were all done in violation of the decisions of the CA and this Court, and without compliance with the legal requirements under the Corporation Code. There being no valid extension of corporate term, RUBY's corporate life had legally ceased. Consequently, Lim moved that the SEC: (1) declare as null and void the infusion of additional capital made by the majority stockholders and restore the capital structure of RUBY to its original structure prior to the time injunction was issued; and (2) declare as null and void the resolution of the majority stockholders extending the corporate life of RUBY for another twenty-five (25) years.

The MANCOM concurred with Lim and made a similar manifestation/comment[24] regarding the irregular and invalid capital infusion and extension of RUBY's corporate term approved by stockholders representing only 60% of RUBY's outstanding capital stock. It further stated that the foregoing acts were perpetrated by the majority stockholders without even consulting the MANCOM, which technically stepped into the shoes of RUBY's board of directors. Since RUBY was still under a state of suspension of payment at the time the special stockholders' meeting was called, all corporate acts should have been made in consultation and close coordination with the MANCOM.

Lim likewise filed an Opposition[25] to BPI's Motion to Vacate Suspension Order, asserting that the management committee originally created by the SEC continues to control the corporate affairs and properties of RUBY. He also contended that the SEC Rules of Procedure on Corporate Recovery cannot apply in this case which was filed

long before the effectivity of said rules.

On the other hand, RUBY filed its Opposition[26] to the Motion filed by Lim denying the allegation of Lim that RUBY's corporate existence had ceased. RUBY claimed that due notice were given to all stockholders of the October 2, 1991 special meeting in which the infusion of additional capital was discussed. It further contended that the CA decision setting aside the SEC orders approving the Revised BENHAR/RUBY Plan, which was subsequently affirmed by this Court on January 20, 1998, did not nullify the resolution of RUBY's board of directors to issue the previously unissued shares. The amendment of its articles of incorporation on the extension of RUBY's corporate term was duly submitted with and approved by the SEC as per the Certification dated September 24, 1996.

The MANCOM also filed its Opposition[27] to BPI's Motion to Vacate Suspension Order, stating that it has continuously performed its primary function of preserving the assets of RUBY and undertaken the management of RUBY's day-to-day affairs. It expressed belief that between chaotic foreclosure proceedings and collection suits that would be triggered by the vacation of the suspension order and an orderly settlement of creditors' claims before the SEC, the latter path is the more prudent and logical course of action. On April 28, 2000, it submitted to the court copies of the minutes of meetings held from January 18, 1999 to December 1, 1999 in pursuance of its mandate to preserve the assets and administer the business affairs of RUBY.[28]

On August 23, 2000, China Bank filed a Manifestation[29] echoing the contentions of BPI that as there is no existing management committee and no rehabilitation plan approved even after the 240-day period, warrants the application of Sec. 4-9 of the SEC Rules of Procedure on Corporate Recovery such that the petition is "deemed ipso facto denied and dismissed." China Bank lamented that the length of time that has lapsed, as well as the parties' actuations, completely betrays a genuine attempt to rehabilitate RUBY's moribund operations - all to the dismay, damage and prejudice of RUBY's creditors. It stressed that the proceedings cannot be prolonged nor used as a ploy to defer indefinitely the payment of long overdue obligations of RUBY to its creditors. With the case having been ipso facto dismissed, there is no need of further action from the parties or an order from the SEC. Consequently, RUBY's creditors may now take whatever legal action they may deem appropriate to protect their rights including, but not limited to extrajudicial foreclosure.

On September 11, 2000, the SEC granted Lim's request for the issuance of subpoena duces tecum/ad testificandum to Ms. Jocelyn Sta. Ana of BPI for the latter to testify and bring all documents and records pertaining to RUBY.[30] Earlier, Lim moved for a hearing to verify the information that China Bank and BPI had separately executed deeds of assignment in favor of Greener Investment Corporation, a company owned by Yu Kim Giang, one of RUBY's majority stockholders.[31] Said hearing, however, did not push through in view of RUBY's proposal for a compromise agreement.[32] Lim submitted his comments on the Proposed Compromise Agreement, but there was no response from RUBY and the majority stockholders.[33] The minority stockholders likewise served a copy of the revised Compromise Agreement to the majority stockholders.[34] Lim moved that the case be assigned to a new Panel of Hearing Officers and the majority stockholders be made to declare in a hearing whether they accept the counterproposals of the minority in their draft Amicable Settlement in order that the case can proceed immediately to liquidation.[35]

On January 25, 2001, the MANCOM filed with the SEC its Resolution unanimously adopted on January 19, 2001 affirming that: (1) MANCOM was never informed nor advised of the supposed capital infusion by the majority stockholders in October 1991 and it never actually received any such additional subscription nor signed any document attesting to or authorizing the said increase of RUBY's capital stock or the extension of its corporate life; (2) MANCOM continuously recognizes the 60%-40% ratio of shareholding profile between the majority and minority stockholders, with the majority having 59.828% while the minority holds 40.172% shareholding; (3) as

there was no valid increase in the shareholding of the majority and consequently no valid extension of corporate term, the liquidation of RUBY is thus in order; (4) to date, the majority stockholders or Yu Kim Giang have not complied with the December 22, 1989 SEC order for them to turn over the cash including bank deposits, all other financial records and documents of RUBY including transfer certificates of title over its real properties, and render an accounting of all the money received by RUBY; and (5) pursuant to this Court's ruling in G.R. No. 96675 dated August 26, 1991, the previous deeds of assignment made in favor of BENHAR by Florence Damon, Philippine Bank of Communications, Philippine Commercial International Bank, Philippine Trust Company, PCI Leasing and Finance, Inc. and FEBTC, having been earlier declared void by the SEC Hearing Panel, and the CA decision in CA-G.R. SP No. 18310 affirmed by this Court - have no legal effect and are deemed void.[36]

On the other hand, Lim filed a Supplement (to Manifestation and Motion dated January 18, 2001)[37] reiterating his pending motion filed on March 15, 2000 for the SEC to implement this Court's January 20, 1998 Decision in G.R. Nos. 124185-87 which states in part that "[t]he SEC therefore has the power and authority, directly to declare all assignment of assets of the petitioner Corporation declared under suspension of payments, null and void, and to conserve the same in order to effect a fair, equitable and meaningful rehabilitation of the insolvent corporation." Lim contended that the SEC retains jurisdiction over pending suspension of payment/rehabilitation cases filed as of June 30, 2000 until these are finally disposed, pursuant to Sec. 5.2 of the Securities Regulation Code (Republic Act [R.A.] No. 8799). Considering that the Management Committee is intact, the majority stockholders cannot act in an illegal manner with regard to RUBY's assets. He thus concluded that the continued disobedience of the majority stockholders to the orders and decisions of the SEC and CA, as affirmed by this Court, have certainly rendered any additional assignments, such as the Deeds of Assignment executed by BPI and China Bank with BENHAR, Henry Yu or conduits of the majority stockholders, null and void.

The MANCOM manifested that it is adopting in toto the Manifestation and Motion dated January 18, 2001 filed by Lim. It also moved for the SEC to conduct further proceedings as directed by this Court. Considering that there is no chance at all for the proposed rehabilitation of RUBY in light of strict implementation by government authorities of environmental laws particularly on pollution control, and MANCOM's assent to effect a liquidation, the MANCOM asserted that a hearing should focus on the eventual liquidation of RUBY. It added that a dismissal under the circumstances would be tantamount to a perceived shirking by the SEC of its mandate to afford all creditors ample opportunity to recover on their respective financial exposure with RUBY.[38]

On May 15, 2001, the MANCOM submitted copies of minutes of meetings held from April 13, 2000 to December 29, 2000.[39]

On September 20, 2001, the SEC issued an Order directing the Management Committee to submit a detailed report - not mere minutes of meetings -- on the status of the rehabilitation process and financial condition of RUBY, which should contain a statement on the feasibility of the rehabilitation plan.[40] The MANCOM complied with the said order on February 15, 2002.[41] The majority stockholders and RUBY moved to dismiss the petition and strike from the records the Compliance/Report. MANCOM filed its omnibus opposition to the said motions. There was further exchange of pleadings by the parties on the matter of whether the SEC should already dismiss the petition of RUBY as prayed for by the majority stockholders and RUBY, or proceed with supervised liquidation of RUBY as proposed by the MANCOM and minority stockholders.

The SEC's Ruling

On September 18, 2002, the SEC issued its Order[42] denying the petition for suspension of payments, as follows:

WHEREFORE, in view of the foregoing, the Commission hereby resolves to terminate the proceedings and DENY the instant petition.

Accordingly, pursuant to Sec. 5-5 of the SEC's Rules of Procedure on Corporate Recovery, which provides:

"Discharge of the Management Committee -- The Management Committee shall be discharged and dissolved under the following circumstances:

- Whenever the Commission, on motion or motu prop[ri]o, has determined that the necessity for the Management Committee no longer exists;
- Upon the appointment of a liquidator under these Rules;
- By agreement of the parties;
- Upon termination of the proceedings.

Upon its discharge and dissolution, the Management Committee shall submit its final report and render an accounting of its management within such reasonable time as the Commission may allow."

the Management Committee is hereby DISSOLVED. It is likewise ordered to:

- (1) Make an inventory of the assets, funds and properties of the petitioner;
- (2) Turn-over the aforementioned assets, funds and properties to the proper party(ies);
- (3) Render an accounting of its management; and
- (4) Submit its Final Report to the Commission.

The MANCOM is ordered to comply with the foregoing within a non-extendible period of thirty (30) days from receipt of this Order. Relative to any compensation owing to the MANCOM, it is left to the determination of the parties concerned.

No pronouncement as to costs.

SO ORDERED.[43]

The SEC declared that since its order declaring RUBY under a state of suspension of payments was issued on December 20, 1983, the 180-day period provided in Sec. 4-9 of the Rules of Procedure on Corporate Recovery had long lapsed. Being a remedial rule, said provision can be applied retroactively in this case. The SEC also overruled the objections raised by the minority stockholders regarding the questionable issuance of shares of stock by the majority stockholders and extension of RUBY's corporate term, citing the presumption of regularity in the act of a government entity which obtains upon the SEC's approval of RUBY's amendment of articles of incorporation. It pointed out that Lim raised the issue only in the year 2000. Moreover, the SEC found that notwithstanding his allegations of fraud, Lim never proved the illegality of the additional infusion of the capitalization by RUBY so as to warrant a finding that there was indeed an unlawful act.[44]

Lim, in his personal capacity and in representation of the minority stockholders of RUBY, filed a petition for review with prayer for a temporary restraining order and/or writ of preliminary injunction before the CA (CA-G.R. SP No. 73195) assailing the SEC order dismissing the petition and dissolving the MANCOM.

Ruling of the CA

On May 26, 2004, the CA rendered its Decision,[45] the dispositive portion of which states:

WHEREFORE, the Questioned Order dated 18 September 2002 issued by the Securities and Exchange Commission in SEC Case No. 2556 entitled "In the Matter of the Petition for Suspension of Payments, Ruby Industrial Corporation, Petitioner," is hereby SET ASIDE, and consequently:

(1) the infusion of additional capital made by the majority stockholders be declared null and void and restoring the capital structure of Ruby to its original structure prior to the time the injunction was issued, that is, majority stockholders - 59.828% and the minority stockholders - 40.172% of the authorized capital stock of Ruby Industrial Corporation.

(2) the resolution of the majority stockholders, who represents only 59.828% of the outstanding capital stock of Ruby, extending the corporate life of Ruby for another twenty-five (25) years which was made during the supposed stockholders' meeting held on 03 September 1996 be declared null and void;

(3) implementing the invalidation of any and all illegal assignments of credit/purchase of credits and the cancellation of mortgages connected therewith made by the creditors of Ruby Industrial Corporation during the effectivity of the suspension of payments order including that of China Bank and BPI and to deliver to MANCOM or the Liquidator all the original of the Deeds of Assignments and the registered titles thereto and any other documents related thereto; and order their unwinding and requiring the majority stockholders to account for all illegal assignments (amounts, dates, interests, etc. and present the original documents supporting the same); and

(4) ordering the Securities and Exchange Commission to supervise the liquidation of Ruby Industrial Corporation after the foregoing steps shall have been undertaken.

SO ORDERED.[46]

According to the CA, the SEC erred in not finding that the October 2, 1991 meeting held by RUBY's board of directors was illegal because the MANCOM was neither involved nor consulted in the resolution approving the issuance of additional shares of RUBY.

The CA further noted that the October 2, 1991 board meeting was conducted on the basis of the September 18, 1991 order of the SEC Hearing Panel approving the Revised BENHAR/RUBY Plan, which plan was set aside under this Court's January 20, 1998 Decision in G.R. Nos. 124185-87. The CA pointed out that records confirmed the proposed infusion of additional capital for RUBY's rehabilitation, approved during said meeting, as implementing the Revised BENHAR/RUBY Plan. Necessarily then, such capital infusion is covered by the final injunction against the implementation of the revised plan. It must be recalled that this Court affirmed the CA's ruling that the revised plan not only recognized the void deeds of assignments entered into with some of RUBY's creditors in violation of the CA's decision in CA-G.R. SP No. 18310, but also maintained a financing scheme which will just make the rehabilitation plan more costly and create a worse situation for RUBY.

On the supposed delay of the minority stockholders in raising the issue of the validity of the infusion of additional capital effected by the board of directors, the CA held that laches is inapplicable in this case. It noted that Lim sought relief while the case is still pending before the SEC. If ever there was delay, the same is not fatal to the cause of the minority stockholders.

The CA likewise faulted the SEC in relying on the presumption of regularity on the matter of the extension of RUBY's corporate term through the filing of amended articles of incorporation. In doing so, the CA totally disregarded the evidence which rebutted said presumption, as demonstrated by Lim: (1) it was the board of directors and not the stockholders which conducted the meeting without the approval of the MANCOM; (2) there was no written waivers of the minority stockholders' pre-emptive rights and thus it was irregular to merely notify them of the board of directors' meeting and ask them to exercise their option; (3) there was an existing permanent injunction against any additional capital infusion on the BENHAR/RUBY Plan, while the CA and this Court both rejected the Revised BENHAR/RUBY Plan; (4) there was no General Information Sheet reports made to the SEC on the alleged capital infusion, as per certification by the SEC; (5) the Certification stating the present percentage of majority shareholding, dated December 21, 1993 and signed by Yu Kim Giang -- which was not sworn to

before a Notary Public -- was supposedly filed in 1996 with the SEC but it does not bear a stamped date of receipt, and was only attached in a 2000 motion long after the October 1991 board meeting; (6) said Certification was contradicted by the SEC list of all stockholders of RUBY, in which the majority remained at 59.828% and the minority shareholding at 40.172% as of October 27, 1991; (7) certain receipts for the amount of P1.7 million was presented by the majority stockholders only in the year 2000, long after Lim questioned the inclusion of extension of corporate term in the Notice of Meeting when Lim filed before the CA a motion to cite for contempt (CA-G.R. Nos. 32404, 32469 and 32483); and (8) this Court's decisions in the cases elevated to it had recognized the 40% stockholding of the minority. Upon the foregoing grounds, the CA said that the SEC should have invalidated the resolution extending the corporate term of RUBY for another twenty-five (25) years.

With the expiration of the RUBY's corporate term, the CA ruled that it was error for the SEC in not commencing liquidation proceedings. As to the dismissal of RUBY's petition for suspension of payments, the CA held that the SEC erred when it retroactively applied Sec. 4-9 of the Rules of Procedure on Corporate Recovery. Such retroactive application of procedural rules admits of exceptions, as when it would impair vested rights or cause injustice. In this case, the CA emphasized that the two decisions of this Court still have to be implemented by the SEC, but to date the SEC has failed to unwind the illegal assignments and order the assignees to surrender the Deeds of Assignment to the MANCOM.

On the issue of violation of the rule against forum shopping, the CA held that this is not applicable because the parties in CA-G.R. SP No. 73169 (filed by MANCOM) and CA-G.R. SP No. 73195 (filed by Lim) are not the same and they do not have the same interest. This issue was in fact already resolved in G.R. Nos. 124185-87 wherein this Court, citing *Ramos, Sr. v. Court of Appeals*[47] declared that private respondents Lim, the unsecured creditors (ALFC) and MANCOM cannot be considered to have engaged in forum shopping in filing separate petitions with the CA as each have distinct rights to protect.

The CA also found that the belated submission of the special power of attorney executed by the other minority stockholders representing 40.172% of RUBY's ownership has no bearing to the continuation of the petition filed with the appellate court. Moreover, since the petition is in the nature of a derivative suit, Lim clearly can file the same not only in representation of the minority stockholders but also in behalf of the corporation itself which is the real party in interest. Thus, notwithstanding that Lim's ownership in RUBY comprises only 1.4% of the outstanding capital stock, as claimed by the majority stockholders, his petition may not be dismissed on this ground.

The Consolidated Petitions

From the Decision of the CA, China Bank and the Majority Stockholder joined by RUBY, filed separate petitions before this Court.

In G.R. No. 165887, petitioners Majority Stockholders and RUBY raised the following grounds for the reversal of the assailed decision and the reinstatement of the SEC's September 18, 2002 Order:

First Reason

THE COURT OF APPEALS ERRED - AND WHEN IT DID, IT ACTED CONTRARY TO LAW AND PRECEDENTS - WHEN IT GAVE DUE COURSE TO, AND, THEREAFTER, SUSTAINED, A FORMALLY AND SUBSTANTIALLY DEFECTIVE PETITION FOR REVIEW.

Second Reason

THE COURT OF APPEALS ERRED - AND WHEN IT DID, IT ACTED IN A MANNER AT WAR WITH ORDERLY PROCEDURE AND APPLICABLE JURISPRUDENCE - WHEN IT REVERSED THE ORDER

OF DISMISSAL OF THE SECURITIES AND EXCHANGE COMMISSION AND SUBSTITUTED ITS JUDGMENT FOR THAT OF THE LATTER IN THE DETERMINATION OF ISSUES WELL WITHIN THE EXPERTISE OF THE COMMISSION.

Third Reason

THE COURT OF APPEALS ERRED - AND WHEN IT DID, IT ACTED IN GRAVE ABUSE OF ITS DISCRETION AND, IN FACT, IN EXCESS OR LACK OF JURISDICTION -- WHEN IT SUSTAINED COLLATERAL ATTACKS OF FINAL ADJUDICATIONS OF THE SECURITIES AND EXCHANGE COMMISSION.[48]

On the other hand, petitioner China Bank in G.R. No. 165929 puts forth the argument that the principle of stare decisis cannot be given effect in this case considering the prevailing factual circumstances, as to do so would result in manifest injustice. It contends that the reason for the declaration of nullity of the Deed of Assignment pronounced more than a decade ago, has become legally inefficacious by its obsolescence. The creditors of RUBY have the right to recover their credit. But when the CA ordered the nullification of China Bank's Deed of Assignment in favor of Greener Investment Corporation, it practically dashed its last hope for ever recovering its credit.

China Bank is of the view that the CA overstretched the import of this Court's January 20, 1998 decision in G.R. Nos. 124185-87 when the SEC was ordered to "conduct further proceedings," as to include the unwinding of the alleged illegal assignment of credits. The rehabilitation of RUBY, if it still may be capable of, is not made dependent on the unwinding by the SEC of the illegal assignments, as the same concerns only the issue of who shall now become the creditors of RUBY, and does not alter the fact that RUBY has hefty loan obligations and it has not enough cash flow to pay for the same.

Deploring the principal parties' penchant for prolonged litigation resulting considerably in irreversible losses to RUBY, China Bank maintains that from the report submitted by the MANCOM to the SEC, it can be clearly seen that no attempt at rehabilitation whatsoever had been pursued. Given the current situation, China Bank prays that the CA Decision be reversed and its Deed of Assignment in favor of Greener Investment Corporation be recognized and given full legal effect.

In fine, main issues to be resolved are: (1) whether private respondents MANCOM and Lim engaged in forum shopping when they filed separate petitions before the CA assailing the September 18, 2002 SEC Order; (2) whether the defects in the certification of non-forum shopping submitted by Lim warrant the dismissal of his petition before the CA; (3) whether the CA was correct in reversing the SEC's order dismissing the petition for suspension of payment.

Our Ruling

The petitions have no merit.

On the charge of forum shopping, we have already ruled on the matter in G.R. Nos. 124185-87. Thus:

We hold that private respondents are not guilty of forum-shopping. In *Ramos, Sr. v. Court of Appeals*, we ruled:

"The private respondents can be considered to have engaged in forum shopping if all of them, acting as one group, filed identical special civil actions in the Court of Appeals and in this Court. There must be identity of parties or interests represented, rights asserted and relief sought in different tribunals. In the case at bar, two groups of private respondents appear to have acted independently of each other when they sought relief from the appellate court. Both groups sought relief from the same tribunal.

"It would not matter even if there are several divisions in the Court of Appeals. The adverse party can always ask for the consolidation of the two cases. x x x"

In the case at bar, private respondents represent different groups with different interests - the minority stockholders' group, represented by private respondent Lim; the unsecured creditors group, Allied Leasing & Finance Corporation; and the old management group. Each group has distinct rights to protect. In line with our ruling in Ramos, the cases filed by private respondents should be consolidated. In fact, BENHAR and RUBY did just that - in their urgent motions filed on December 1, 1993 and December 6, 1993, respectively, they prayed for the consolidation of the cases before the Court of Appeals.[49]

In the present case, no consolidation of CA-G.R. SP Nos. 73169 (filed by MANCOM) which was earlier assigned to the Thirteenth Division and CA-G.R. SP No. 73195 (filed by Lim) decided by the Second Division, took place. In their Comment filed before CA-G.R. SP No. 73169, the Majority Stockholders and RUBY (private respondents therein) prayed for the dismissal of said case arguing that MANCOM, of which Lim is a member, circumvented the proscription against forum shopping. The CA's Thirteenth Division, however, disagreed with private respondents and granted the motion to withdraw petition filed by MANCOM which manifested that the Second Division in CA-G.R. SP No. 73195 by Decision dated May 26, 2004 had granted the reliefs similar to those prayed for in their petition, said decision being binding on MANCOM which was also impleaded in said case (CA-G.R. SP No. 73195). The Thirteenth Division also cited our pronouncement in G.R. Nos. 124185-87 to the effect that there was no violation on the rule on forum shopping because MANCOM and Lim or the minority shareholders of RUBY represent different interests.[50]

As to the alleged defects in the certificate of non-forum shopping submitted by Lim, we find no error committed by the CA in holding that the belated submission of a special power of attorney executed in Lim's favor by the minority stockholders has no bearing to the continuation of the case as supported by ample jurisprudence. To appreciate the liberal stance adopted by the CA, one must take into account the previous history of the petitions for review before the CA involving the SEC September 18, 2002 Order. It was actually the third time that Lim and/or MANCOM have challenged certain acts perpetrated by the majority stockholders which are prejudicial to RUBY, such as the execution of deeds of assignment during the effectivity of the suspension order in pursuit of two rehabilitation plans submitted by them together with BENHAR. The assignment of RUBY's credits to BENHAR gave the secured creditors undue advantage over RUBY's prime properties and put these assets beyond the reach of the unsecured creditors. Each time they go to court, Lim and MANCOM essentially advance the interest of the corporation itself. They have consistently taken the position that RUBY's assets should be preserved for the equal benefit of all its creditors, and vigorously resisted any attempt of the controlling stockholders to favor any or some of its creditors by entering into questionable deals or financing schemes under two BENHAR/RUBY Plans. Viewed in this light, the CA was therefore correct in recognizing Lim's right to institute a stockholder's action in which the real party in interest is the corporation itself.

A derivative action is a suit by a shareholder to enforce a corporate cause of action.[51] It is a remedy designed by equity and has been the principal defense of the minority shareholders against abuses by the majority.[52] For this purpose, it is enough that a member or a minority of stockholders file a derivative suit for and in behalf of a corporation.[53] An individual stockholder is permitted to institute a derivative suit on behalf of the corporation wherein he holds stock in order to protect or vindicate corporate rights, whenever officials of the corporation refuse to sue or are the ones to be sued or hold the control of the corporation. In such actions, the suing stockholder is regarded as the nominal party, with the corporation as the party in interest.[54]

Now, on the third and substantive issue concerning the SEC's dismissal of RUBY's petition for suspension of payment.

The SEC based its action on Sec. 4-9 of the Rules of Procedure on Corporate Recovery,[55] which provides:

SEC. 4-9. Period of Suspension Order. - The suspension order shall be effective for a period of sixty (60) days from the date of its issuance. The order shall be automatically vacated upon the lapse of the sixty-day period unless extended by the Commission. Upon motion, the Commission may grant an extension thereof for a period of not more than sixty (60) days in each application if the Commission is satisfied that the debtor and its officers have been acting in good faith and with due diligence, and that the debtor would likely be able to make a viable rehabilitation plan. After the lapse of one hundred and eighty (180) days from the issuance of the suspension order, no extension of the said order shall be granted by the Commission if opposed in writing by a majority of any class of creditors. The Commission may grant an extension beyond one hundred eighty (180) days only if it appears by convincing evidence that there is a good chance for the successful rehabilitation of the debtor and the opposition thereto by the creditor appears manifestly unreasonable.

In any event, the petition is deemed ipso facto denied and dismissed if no Rehabilitation Plan was approved by the Commission upon the lapse of the order or the last extension thereof. In such case, the debtor shall come under the dissolution and liquidation proceedings of Rule V of these Rules. (Emphasis supplied.)

According to the SEC, even if the 180 days maximum period of suspension order is counted from the finality of this Court's decision in G.R. Nos. 124185-87 in December 1998, still this case had gone beyond the period mandated in the Rules for a corporation under suspension of payment to have a rehabilitation plan approved by the Commission.

While it is true that the Rules of Procedure on Corporate Recovery authorizes the dismissal of a petition for suspension of payment where there is no rehabilitation plan approved within the maximum period of the suspension order, it must be recalled that there was in fact not one, but two rehabilitation plans (BENHAR/RUBY Plan and Revised BENHAR/RUBY Plan) submitted by the majority stockholders which were approved by the SEC. The implementation of the first plan was enjoined when it was seriously challenged in the courts by the minority stockholders through Lim. The second revised plan superseded the first plan, but eventually nullified by the CA and the CA decision declaring it void was affirmed by this Court in G.R. Nos. 124185-87. Given this factual milieu, the automatic application of the lifting of the suspension order as interpreted by the SEC in its September 18, 2002 Order would be unfair and highly prejudicial to the financially distressed corporation.

Moreover, records reveal that the delay in the proceedings after the case was set for hearing following this Court's final judgment in G.R. Nos. 124185-87, was not due to any fault or neglect on the part of MANCOM or the minority stockholders. The idea propounded by the petitioners majority stockholders that this case is about a minority in a corporation holding hostage the majority indefinitely by simple assertion that the former's rights have been transgressed by the latter is, downright misleading.

First, the SEC did not even mention in its September 18, 2002 Order that when this Court remanded to it the case for further proceedings, there remained only the Alternative Plan of RUBY's minority stockholders which had earlier been forwarded to the SEC Hearing Panel. With the CA Decision setting aside the SEC approval of the Revised BENHAR/RUBY Plan, as affirmed by this Court, it behooves on the SEC to recognize the fact that the Alternative Plan was endorsed by 90% of the RUBY's creditors who had objected to the Revised BENHAR/RUBY Plan. Yet, not a single step was taken by the SEC to address those findings and conclusions made by the CA and this Court on the highly disadvantageous and onerous provisions of the Revised BENHAR/RUBY Plan.

Moreover, the SEC failed to act on motions filed by Lim and MANCOM to implement this Court's January 20, 1998 Decision in G.R. Nos. 124185-87, by declaring all deeds of assignment with BENHAR and/or the conduits of Henry Yu of no force and legal effect, which of course necessitates the surrender by the concerned creditors of

those void deeds of assignment. Petitioner China Bank dismisses it as unnecessary and immaterial to the continued inability of RUBY to settle its long overdue debts. However, the CA said that the foregoing acts should have been done by the SEC for proper documentation and orderly settlement after proper accounting of the assignment transactions. The appellate court then concluded that dismissal of the petition under Sec. 4-9 of the Rules of Procedure on Corporate Recovery would impair the vested rights of the minority stockholders under this Court's decision invalidating the aforesaid deeds of assignment, thus:

We agree with the observations of the petition that if the illegal assignments not having been unwound and the mortgages not canceled, the majority, their alter ego, and/or cohorts will claim to be secured creditors and freely collect extra-judicially the obligations covered by the illegal assignments. Ruby has very little money compared to the P200 Million probable liability to the illegal assignees as unilaterally stated by Ruby without audit (previously merely totaled to P34 Million in 1998 as stated in the revised rehabilitation plan). Foreclosure of the mortgages by the illegal assignees will follow; Ruby will lose all its prime properties; there will be no assets left for unsecured creditors; and there will be no residual P600 Million assets to divide.[56]

Evidently, the minority stockholders and MANCOM had already foreseen the impossibility of implementing a viable rehabilitation plan if the illegal assignments made by its creditors with BENHAR and the majority stockholders, and subsequently, with conduits of RUBY or Henry Yu, are not properly unwound and those directors responsible for the void transactions not required to make a full accounting. Contrary to petitioner China Bank's insinuation that the minority stockholders merely want to prolong the litigation to the great prejudice and damage to RUBY's creditors, MANCOM and Lim had determined and moved for SEC-supervised liquidation proceedings as the more prudent course of action for an orderly and equitable settlement of RUBY's liabilities.

Records likewise revealed that the SEC chose to keep silent and failed to assist the MANCOM and minority stockholders in their efforts to demand compliance from the majority stockholders or Yu Kim Giang (who headed the first MANCOM) with the December 22, 1989 Order directing them to turn over the cash, financial records and documents of RUBY, including certificates of title over RUBY's real properties, and render an accounting of all moneys received and payments made by RUBY. On January 18, 2002, the MANCOM even filed a Motion[57] to require Yu Kim Giang to render report/accounting of RUBY from 1983 to the 1st quarter of 1990, stating that despite a commitment from Mr. Giang, he has seemingly delayed his compliance, hence frustrating the desire of MANCOM to submit a comprehensive and complete report for the whole period of 1983 up to the present. To underscore the importance of making the said records available for scrutiny of the SEC and MANCOM, Lim manifested before the SEC that--

Indeed, the majority is actually unwilling (and not merely unable) to submit such records because these will show, among others:

(1)

The majority to minority ratio in the corporate ownership is 59.828% :40.172%;

(2)

The actual amounts of the bank loans paid off by Benhar International[,] Inc. and/or Henry Yu would be very low;

(3)

The illegal payment of the bank loans and illegal assignments of the mortgages to Benhar/Henry Yu are contrary to the Honorable Commission's Order of 20 December 1983 for suspension of payments;

(4)

The earnings of the corporation from 1983 to 1989 amounted to millions and cannot be accounted for by the majority and the first Mancom;

(5)

The money may have been spent to pay off some of the loans to the bank but Benhar and Henry Yu fraudulently claim credit therefor.[58]

It must be noted that MANCOM had rejected the two rehabilitation plans proposed by BENHAR and the majority stockholders. In shifting the blame to the MANCOM and minority stockholders for the delay in the approval of a viable rehabilitation plan, the SEC apparently overlooked that from the time the SEC approved the Revised BENHAR/RUBY Plan and dissolved the MANCOM, the majority stockholders has denied MANCOM access to corporate papers, documents evidencing the amounts actually paid to creditor banks/assignors, financial statements and titles over RUBY's real properties.

Although the SEC granted MANCOM and Lim's request for a hearing and direct a representative from BPI to bring all documents relative to the assignment of RUBY's credit, said hearing did not materialize after the majority stockholders proposed a compromise agreement with the minority stockholders. But as it turned out, this development only caused further delay because the majority stockholders were unwilling to turn over documents, funds and properties in their possession, and would neither make a full accounting or disclosure of RUBY's transactions, especially the actual amounts paid and rates of interest on the loan assignments. In this state of things, the MANCOM and minority stockholders resolved that the more reasonable and practical option is to move for a SEC-supervised liquidation proceedings.

The other ground invoked by Lim and MANCOM for the propriety of liquidation is the expiration of RUBY's corporate term. The SEC, however, held that the filing of the amendment of articles of incorporation by RUBY in 1996 complied with all the legal requisites and hence the presumption of regularity stands. Records show that the validity of the infusion of additional capital which resulted in the alleged increase in the shareholdings of petitioners majority stockholders in October 1991 was questioned by MANCOM and Lim even before the majority stockholders filed their motion to dismiss in the year 2000.

A stock corporation is expressly granted the power to issue or sell stocks.[59] The power to issue shares of stock in a corporation is lodged in the board of directors and no stockholders' meeting is required to consider it because additional issuances of shares of stock does not need approval of the stockholders.[60] What is only required is the board resolution approving the additional issuance of shares. The corporation shall also file the necessary application with the SEC to exempt these from the registration requirements under the Revised Securities Act (now the Securities Regulation Code).

The new management committee created pursuant to SEC Order dated September 18, 1991 apparently had no participation in the October 2, 1991 board resolution approving the issuance of additional shares. The move was part of the board's assertion of control over the management in RUBY following the approval of the Revised BENHAR/RUBY Plan. The minority stockholders registered their objection during the said meeting by asking the board to defer action as the SEC September 18, 1991 Order was still on appeal with the SEC En Banc. When the SEC En Banc denied their appeal and motion for reconsideration under its July 30, 1993 and October 15, 1993 orders, Lim, MANCOM and ALFC filed petitions for review with the CA which set aside the said orders. As already mentioned, this Court affirmed the CA ruling in G.R. Nos. 124185-87.

Contrary to the assertion of petitioners majority stockholders, our decision in G.R. Nos. 124185-87 nullified the deeds of assignment not solely on the ground of violation of the injunction orders issued by the SEC and CA. As earlier mentioned, we affirmed the CA's finding that the re-lending scheme under the Revised BENHAR/RUBY

Plan will not only make rehabilitation more costly for RUBY, but also worsen its financial condition because of the mortgage of its assets to a new creditor. To better illumine this point, we quote from the CA decision in CA-G.R. SP Nos. 32404, 32469 and 32483 comparing the provisions of the rehabilitation proposals submitted by the majority stockholders (Revised BENHAR/RUBY Plan) and the minority stockholders (Alternative Plan):

...there is no need for Benhar to act as financier, as Ruby itself can very well secure such credit accommodation using its assets as collateral. Verily, Benhar's pretext at magnanimity is deception of the highest order considering that: (1) as embodied in the heading Sources and Uses of Funds in the Revised Benhar/Ruby Plan, the P80-Million loan/credit facility to be extended by Benhar will be used to pay P60.437-Million loans of Ruby. Of the P60.437-Million, P34.068-Million will be paid to Benhar as payment for the amounts it paid in consideration of the nullified assignments; (2) The Deed of Assignment of Credit Facility will be executed by Benhar in favor of Ruby only upon payment of Ruby of such amount already advanced by Benhar, i.e. the P34.068-Million credit assigned to Benhar by the seven (7) secured creditors.

The Revised Benhar/Ruby Plan, in fact, gives Benhar undue preference on the matter of repayment. Under the said plan, the creditors of Ruby will be paid in accordance with the following schedules:

"Secured Creditors

P17.022M

To be paid in cash with 12% interest p.a.

China Banking Corp.

BPI

Philippine Orient

Unsecured Creditors

P 9.347M

To be paid in cash interest-f[r]ee

Allied Leasing

Filcor Finance

Benhar

P34.068M

To be paid in cash with interest charge

For having paid

Ruby obligations

to 7 creditors

Trade/Other Creditors

P2.871M (p.a. for 3 years)

Totalling P8.614M to be paid in 3- year installment, interest-free"

(Rollo, CA-G.R. SP No. 32404, p. 727)

Needless to state, the foregoing payment schedules as embodied in the said plan which gives Benhar undue advantage over the other creditors goes against the very essence of rehabilitation, which requires that no creditor should be preferred over the other. Indeed, a comparison of the salient features of the Revised Benhar/Ruby Plan and the Alternative Plan will readily show just how stacked in favor of Benhar are the provisions of the former plan:

Benhar/Ruby Plan

Alternative Plan

1.

Benhar plays a major role.
It will be paid P34.068M out of
P60.437 M total amount due to
creditors but not explained as to
how arrived at.

1.

The original creditors are the
ones recognized. The amount
payable is lower because interests
are not capitalized.

2.

Benhar will not assign the credit
facility of P80M unless the P34.068M
above stated is paid.

2.

Direct credit of P80M loan and
will be borrowed from the bank(s)
like Allied, UCPB, Metrobank or
Equitable Bank or even China Bank.

3.

The main assets are to be mortgaged to
the creditor- assignor of Benhar and if the
illegal assignments are recognized, then
Benhar shall have to be recognized as
mortgagee even when it is a disqualified
creditor and/or mortgagee.

3.

Mortgaged to bank(s) directly.

4.

Start up cost P16,880 and based on 1988 figures and projections.

4.

Plant B = P25,640 Year IV estimated
P40. M Plant A = 22.40 Year V estimated P30. M

5.

Rehabilitation only of Plant B.

5.

Rehabilitation of both plants.

6.

Recognition of Benhar re-lender/financier.

6.

None

7.

Because of the SEC Order he got an MC seat and the Pilipinas Shell representative of trade creditors was retained.

7.

Pilipinas Shell representative be retained.

8.

Credit facility is being assigned or re-lent by Benhar.

8.

Credit facility directly to Ruby.

9.

Authorized Benhar to mortgage assets of Ruby itself. Only remaining unencumbered asset is one (1) real property. Two (2) prime properties already encumbered to Assignor of Benhar.

9.

None going to the minority but to actual lenders.

10.

Capacity of only one (1) plant stated

at 72% (overrated)

10.

Capacity of two (2) plants progressive to 75% or 80% with purchase of new machines.

11.

Projection figures based on May, 1990 forex exchange rate. Cost of importation and other local supplier currently cannot be met.

11.

Minority RP can be updated at current foreign exchange rate.

12.

Market and economic slow down not taken into consideration.

12.

Taken into consideration so will upgrade to meet competition.

13.

Discriminatory to creditors Benhar-capitalized with undisclosed rates of interest.

13.

Not discriminatory.

14.

Original Figures of illegally assigned loans from FEBTC, PCIB, PTC which totaled to P11,419,036.87 but now entered as P21,378,002.71. The interest is undisclosed and may have been capitalized. Figures for the other four (4) secured lenders not available individually. Total of seven (7) secured lenders given as P34.068 M.

14.

Original figures will be used original figures plans 12% interest only.

15.

Interest is 28% with Benhar as conduit.

15.

Interest is 25% payable to the bank.
This is still subject to current market
rates to be negotiated by the minority.

16.

Call on unissued shares for P11.814 M
and if minority will take up their pre-emptive
rights and dilute minority shareholdings.

15.

Additional subscription of P16M
within 6 months by the minority stockholders.

x x x x[61]

Prior to the September 18, 1991 Order approving the Revised BENHAR/RUBY Plan and dissolving the MANCOM, majority of RUBY's creditors (90%) have already withdrawn their support to the revised plan and manifested that they were only lately informed about another plan submitted by the minority stockholders. Hence, these creditors wrote individual letters to the SEC Hearing Panel expressing their agreement with and endorsement of the Alternative Plan of the minority stockholders.[62]

The Revised BENHAR/RUBY Plan had proposed the calling for subscription of unissued shares through a Board Resolution from the P11.814 million of the P23.7 million ACS "in order to allow the long overdue program of the REHAB Program." RUBY will offer for subscription 118,140 shares of stocks at par value of P100 each to all stockholders on record, payable within 15 days, or within a reasonable period from SEC approval of the revised plan.[63] This was implemented by the October 2, 1991 meeting of the Board of Directors led by Yu Kim Giang. The minority directors claimed they were not notified of said board meeting. At any rate, the CA decision nullifying the Revised BENHAR/RUBY Plan was affirmed by this Court on January 20, 1998. Hence, the legitimate concerns of the minority stockholders and MANCOM who objected to the capital infusion which resulted in the dilution of their shareholdings, the expiration of RUBY's corporate term and the pending incidents on the void deeds of assignment of credit - all these should have been duly considered and acted upon by the SEC when the case was remanded to it for further proceedings. With the final rejection of the courts of the Revised BENHAR/RUBY Plan, it was grave error for the SEC not to act decisively on the motions filed by the minority stockholders who have maintained that the issuance of additional shares did not help improve the situation of RUBY except to stifle the opposition coming from the MANCOM and minority stockholders by diluting the latter's shareholdings. Worse, the SEC ignored the evidence adduced by the minority stockholders indicating that the correct amount of subscription of additional shares was not paid by the majority stockholders and that SEC official records still reflect the 60%-40% percentage of ownership of RUBY.

The SEC remained indifferent to the reliefs sought by the minority stockholders, saying that the issue of the validity of the additional capital infusion was belatedly raised. Even assuming the October 2, 1991 board meeting indeed took place, the SEC did nothing to ascertain whether indeed, as the minority claimed: (1) the minority stockholders were not given notice as required and reasonable time to exercise their pre-emptive rights; and (2) the capital infusion was not for the purpose of rehabilitation but a mere ploy to divest the minority stockholders of their 40.172% shareholding and reduce it to a mere 25.25%.

The foregoing matters, along with the persistent refusal of the majority stockholders, led by Yu Kim Giang, to give a full accounting of their transactions involving RUBY's credits and properties, were extensively argued by the minority stockholders in their opposition to the motions to dismiss/vacate suspension order filed by the

majority stockholders and BPI, as follows:

Their receipts only show supposed payment by the majority of a total of P1,759,150.00 out of the correct amount of P7,068,079.92.00 (sic) (59.828% of P11.814 million required capital infusion under the MRP and RRP) which should have been the amount paid by them under the RRP which requires full payment. Thus, they sought to attain a 74.75% equity from a 59.828% original equity by playing more tricks and stating that, under the general rule, they are supposedly allowed to pay-up only 25% of their subscription. Unfortunately for them, in a rehabilitation supervised by the SEC and with an existing Mancom, the general rule does not apply. What is stated in the rehabilitation plan must be strictly followed provided the rehabilitation plan has been finally approved.

It must be remembered that in October 2 to 17, 1991, the amounts owed by Ruby to the banks who illegally assigned their loans/credit was stated at P34 Million. Operations needed another P20 Million plus. A capital infusion of P1,759,150.00 was so miniscule and clearly not for rehabilitation but was intended to deprive the minority of its blocking position and property rights since distribution after liquidation is based on the percentage of stockholdings. It is not only unfair, inequitable and not meaningful - it is clearly dishonest.

x x x x

Assuming arguendo that the Board of Directors could act independently and this did not violate any injunction, if the capital infusion was actually made, the Board of Directors had the duty to report this to the Mancom because they would then fall under "existing assets" and would be part of the evaluation of the proposed RRP, necessary for management and in the overall plan of rehabilitation. Nothing of this kind happened and the belated proof cannot correct this situation.

x x x x

It is not true that there is benevolence on the part of the majority when they maneuvered the illegal assignments and paid the banks. The loan obligations remain as accounts payable of Ruby and have even been bloated to gigantic proportions and yet the SEC does not even ask them to account how much these obligations are now and the majority should have reported these to the Mancom, but the majority has not. These anomalous situations have been made to continue long enough and, we pray, should be addressed by the Honorable Commission.

x x x x

...The SEC must understand that, being head of the first Mancom, YU KIM GIANG had the same obligation to render a report to the SEC as the present Mancom now. To single out the present Mancom to do this when a complete report cannot be made without these starting records is discriminatory, unfair and violates the rules of accountancy. For example, where is the report on the illegal assignments and mortgages complete with details? Where did the rentals for the period from 1983 to 1989 go? This amounted to millions. There are no reports on these. By not requiring the first Mancom to Report, the SEC is preventing the complete picture on the liabilities and finances of Ruby from being seen and is sheltering Ruby and the majority.[64] (Additional emphasis supplied.)

Pre-emptive right under Sec. 39 of the Corporation Code refers to the right of a stockholder of a stock corporation to subscribe to all issues or disposition of shares of any class, in proportion to their respective shareholdings. The right may be restricted or denied under the articles of incorporation, and subject to certain exceptions and limitations. The stockholder must be given a reasonable time within which to exercise their preemptive rights. Upon the expiration of said period, any stockholder who has not exercised such right will be deemed to have waived it.[65]

The validity of issuance of additional shares may be questioned if done in breach of trust by the controlling

stockholders. Thus, even if the pre-emptive right does not exist, either because the issue comes within the exceptions in Section 39 or because it is denied or limited in the articles of incorporation, an issue of shares may still be objectionable if the directors acted in breach of trust and their primary purpose is to perpetuate or shift control of the corporation, or to "freeze out" the minority interest.[66] In this case, the following relevant observations should have signaled greater circumspection on the part of the SEC -- upon the third and last remand to it pursuant to our January 20, 1998 decision -- to demand transparency and accountability from the majority stockholders, in view of the illegal assignments and objectionable features of the Revised BENHAR/RUBY Plan, as found by the CA and as affirmed by this Court:

There can be no gainsaying the well-established rule in corporate practice and procedure that the will of the majority shall govern in all matters within the limits of the act of incorporation and lawfully enacted by-laws not proscribed by law. It is, however, equally true that other stockholders are afforded the right to intervene especially during critical periods in the life of a corporation like reorganization, or in this case, suspension of payments, more so, when the majority seek to impose their will and through fraudulent means, attempt to siphon off Ruby's valuable assets to the great prejudice of Ruby itself, as well as the minority stockholders and the unsecured creditors.

Certainly, the minority stockholders and the unsecured creditors are given some measure of protection by the law from the abuses and impositions of the majority, more so in this case, considering the give-away signs of private respondents' perfidy strewn all over the factual landscape. Indeed, equity cannot deprive the minority of a remedy against the abuses of the majority, and the present action has been instituted precisely for the purpose of protecting the true and legitimate interests of Ruby against the Majority Stockholders. On this score, the Supreme Court, has ruled that:

"Generally speaking, the voice of the majority of the stockholders is the law of the corporation, but there are exceptions to this rule. There must necessarily be a limit upon the power of the majority. Without such a limit the will of the majority will be absolute and irresistible and might easily degenerate into absolute tyranny. x x x"[67] (Additional emphasis supplied.)

Lamentably, the SEC refused to heed the plea of the minority stockholders and MANCOM for the SEC to order RUBY to commence liquidation proceedings, which is allowed under Sec. 4-9 of the Rules on Corporate Recovery. Under the circumstances, liquidation was the only hope of the minority stockholders for effecting an orderly and equitable settlement of RUBY's obligations, and compelling the majority stockholders to account for all funds, properties and documents in their possession, and make full disclosure on the nullified credit assignments. Oblivious to these pending incidents so crucial to the protection of the interest of the majority of creditors and minority shareholders, the SEC simply stated that in the interim, RUBY's corporate term was validly extended, as if such extension would provide the solution to RUBY's myriad problems.

Extension of corporate term requires the vote of 2/3 of the outstanding capital stock in a stockholders' meeting called for the purpose.[68] The actual percentage of shareholdings in RUBY as of September 3, 1996 -- when the majority stockholders allegedly ratified the board resolution approving the extension of RUBY's corporate life to another 25 years - was seriously disputed by the minority stockholders, and we find the evidence of compliance with the notice and quorum requirements submitted by the majority stockholders insufficient and doubtful. Consequently, the SEC had no basis for its ruling denying the motion of the minority stockholders to declare as without force and effect the extension of RUBY's corporate existence.

Liquidation, or the settlement of the affairs of the corporation, consists of adjusting the debts and claims, that is, of collecting all that is due the corporation, the settlement and adjustment of claims against it and the payment of its just debts.[69] It involves the winding up of the affairs of the corporation, which means the collection of all assets, the payment of all its creditors, and the distribution of the remaining assets, if any, among the stockholders

thereof in accordance with their contracts, or if there be no special contract, on the basis of their respective interests.[70]

Section 122 of the Corporation Code, which is applicable to the present case, provides:

SEC. 122. Corporate liquidation. -- Every corporation whose charter expires by its own limitation or is annulled by forfeiture or otherwise, or whose corporate existence for other purposes is terminated in any other manner, shall nevertheless be continued as a body corporate for three (3) years after the time when it would have been so dissolved, for the purpose of prosecuting and defending suits by or against it and enabling it to settle and close its affairs, to dispose of and convey its property and to distribute its assets, but not for the purpose of continuing the business for which it was established.

At any time during said three (3) years, said corporation is authorized and empowered to convey all of its property to trustees for the benefit of stockholders, members, creditors, and other persons in interest. From and after any such conveyance by the corporation of its property in trust for the benefit of its stockholders, members, creditors and others in interest, all interests which the corporation had in the property terminates, the legal interest vests in the trustees, and the beneficial interest in the stockholders, members, creditors or other persons in interest.

Upon winding up of the corporate affairs, any asset distributable to any creditor or stockholder or member who is unknown or cannot be found shall be escheated to the city or municipality where such assets are located.

Except by decrease of capital stock and as otherwise allowed by this Code, no corporation shall distribute any of its assets or property except upon lawful dissolution and after payment of all its debts and liabilities.

Since the corporate life of RUBY as stated in its articles of incorporation expired, without a valid extension having been effected, it was deemed dissolved by such expiration without need of further action on the part of the corporation or the State.[71] With greater reason then should liquidation ensue considering that the last paragraph of Sec. 4-9 of the Rules of Procedure on Corporate Recovery mandates the SEC to order the dissolution and liquidation proceedings under Rule VI. Sec. 6-1, Rule VI likewise authorizes the SEC on motion or motu proprio, or upon recommendation of the management committee, to order dissolution of the debtor corporation and the liquidation of its remaining assets, appointing a Liquidator for the purpose, if "the continuance in business of the debtor is no longer feasible or profitable or no longer works to the best interest of the stockholders, parties-litigants, creditors, or the general public."

It cannot be denied that with the current divisiveness, distrust and antagonism between the majority and minority stockholders, the long agony and extreme prejudice caused by numerous litigations to the creditors, and the bleak prospects for business recovery in the light of problems with the local government which are implementing more restrictions and anti-pollution measures that practically banned the operation of RUBY's glass plant - liquidation becomes the only viable course for RUBY to stave off any further losses and dissipation of its assets. Liquidation would also ensure an orderly and equitable settlement of all creditors of RUBY, both secured and unsecured.

The SEC's utter disregard of the rights of the minority in applying the provisions of the Rules of Procedure on Corporate Recovery is inconsistent with the policy of liberal construction of the said rules "to assist the parties in obtaining a just, expeditious and inexpensive settlement of cases.[72] Petitioners majority stockholders, however, assert that the findings and conclusions of the SEC on the matter of the dismissal of RUBY's petition are binding and conclusive upon the CA and this Court. They contend that reviewing courts are not supposed to substitute their judgment for those made by administrative bodies specifically clothed with authority to pass upon matters over which they have acquired expertise.[73] Given our foregoing findings clearly showing that the SEC acted arbitrarily and committed patent errors and grave abuse of discretion, this case falls under the exception to the general rule.

As we held in *Ruby Industrial Corporation v. Court of Appeals*:

The settled doctrine is that factual findings of an administrative agency are accorded respect and, at times, finality for they have acquired the expertise inasmuch as their jurisdiction is confined to specific matters. Nonetheless, these doctrines do not apply when the board or official has gone beyond his statutory authority, exercised unconstitutional powers or clearly acted arbitrarily and without regard to his duty or with grave abuse of discretion. In *Leongson vs. Court of Appeals*, we held: "once the actuation of the administrative official or administrative board or agency is tainted by a failure to abide by the command of the law, then it is incumbent on the courts of justice to set matters right, with this Tribunal having the last say on the matter."^[74]

Petitioners majority stockholders further insist that the minority stockholders were mistaken when they contended that the rehabilitation of RUBY is dependent on the unwinding by the SEC of the illegal assignments and mortgages. They assert that aside from the fact that the SEC had nothing to unwind because the alleged illegal assignments and mortgages were already declared null and void, the said assignments and mortgages will not affect the rehabilitation of Ruby; the same affecting only the issue of how, as to who will be its creditors.

Such contention is untenable and contrary to our previous ruling in G.R. Nos. 124185-87. With the nullification of the deeds of assignments of credit executed by some of Ruby's secured creditors in favor of BENHAR, it logically follows that the assignors or the original bank creditors remain as the creditors on record of RUBY. We have noted that BENHAR, which is controlled by the family of Henry Yu who is also a director and stockholder of RUBY, was not listed as one of RUBY's creditors at the time RUBY filed the petition for suspension of payment. Petitioners majority stockholders' insinuation that RUBY's credits may have been assigned to third parties, if not referring to BENHAR or its conduits, implies two things: either the assignments declared void by this Court's January 20, 1998 decision continues to be recognized by the majority stockholders, in violation of the said decision, or other third parties in connivance with BENHAR and/or the controlling stockholders had subsequently entered the picture, without approval of the SEC and while the SEC December 20, 1983 Order enjoining the disposition of RUBY's properties was in force.

The majority stockholders' eagerness to have the suspension order lifted or vacated by the SEC without any order for its liquidation evinces a total disregard of the mandate of Sec. 4-9 of the Rules of Procedure on Corporate Recovery, and their obvious lack of any intent to render an accounting of all funds, properties and details of the unlawful assignment transactions to the prejudice of RUBY, minority stockholders and the majority of RUBY's creditors. The majority stockholders and BENHAR's conduits must not be allowed to evade the duty to make such full disclosure and account any money due to RUBY to enable the latter to effect a fair, orderly and equitable settlement of all its obligations, as well as distribution of any remaining assets after paying all its debtors.

In fine, no error was committed by the CA when it set aside the September 18, 2002 Order of the SEC and declared the nullity of the acts of majority stockholders in implementing capital infusion through issuance of additional shares in October 1991, the board resolution approving the extension of RUBY's corporate term for another 25 years, and any illegal assignment of credit executed by RUBY's creditors in favor of third parties and/or conduits of the controlling stockholders. The CA likewise correctly ordered the delivery of all documents relative to the said assignment of credits to the MANCOM or the Liquidator, the unwinding of these void deeds of assignment, and their full accounting by the majority stockholders.

The petitioners majority stockholders and China Bank cannot be permitted to raise any issue again regarding the validity of any assignment of credit made during the effectivity of the suspension order and before the finality of the September 18, 2002 Order lifting the same. While China Bank is not precluded from questioning the validity of the December 20, 1983 suspension order on the basis of *res judicata*, it is, however, barred from doing so by the principle of law of the case. We have held that when the validity of an interlocutory order has already been

passed upon on appeal, the Decision of the Court on appeal becomes the law of the case between the same parties. Law of the case has been defined as "the opinion delivered on a former appeal. More specifically, it means that whatever is once irrevocably established as the controlling legal rule of decision between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the court." [75]

The unwinding process of all such illegal assignment of RUBY's credits is critical and necessary, in keeping with good faith and as a matter of fairness and justice to all parties affected, particularly the unsecured creditors who stands to suffer most if left with nothing of the assets of RUBY, and the minority stockholders who waged legal battles to defend the interest of RUBY and protect the rights of the minority from the abuses of the controlling stockholders. As correctly stated by the CA:

Liquidation is imperative because the unsecured creditor must negotiate the amount of the imputable interest rate on its long unpaid credit, the decision on which assets are to be sold to liquidate the illegally assigned credits must be made, the other secured credits and the trade credits must be determined, and most importantly, the restoration of the 40.172% minority percentage of ownership must be done. [76]

However, we do not agree that it is the SEC which has the authority to supervise RUBY's liquidation.

In the case of *Union Bank of the Philippines v. Concepcion*, [77] the Court is presented with the issue of whether the SEC had jurisdiction to proceed with insolvency proceedings after it was shown that the debtor corporation can no longer be rehabilitated. We held that although jurisdiction over a petition to declare a corporation in a state of insolvency strictly lies with regular courts, the SEC possessed ample power under P.D. No. 902-A, as amended, to declare a corporation insolvent as an incident of and in continuation of its already acquired jurisdiction over the petition to be declared in a state of suspension of payments in the two instances provided in Sec. 5 (d) [78] thereof.

Subsequently, in *Consuelo Metal Corporation v. Planters Development Bank* [79] the Court was again confronted with the same issue. The original petition filed by the debtor corporation was for suspension of payment, rehabilitation and appointment of a rehabilitation receiver or management committee. Finding the petition sufficient in form and substance, the SEC issued an order suspending immediately all actions for claims against the petitioner pending before any court, tribunal or body until further orders from the court. It also created a management committee to undertake petitioner's rehabilitation. Four years later, upon the management committee's recommendation, the SEC issued an omnibus order directing the dissolution and liquidation of the petitioner, and that the proceedings on and implementation of the order of liquidation be commenced at the Regional Trial Court to which the case was transferred. However, the trial court refused to act on the motion filed by the petitioner who requested for the issuance of a TRO against the extrajudicial foreclosure initiated by one of its creditors. The trial court ruled that since the SEC had already terminated and decided on the merits the petition for suspension of payment, the trial court no longer had legal basis to act on petitioner's motion. It likewise denied the motion for reconsideration stating that petition for suspension of payment could not be converted into a petition for dissolution and liquidation because they covered different subject matters and were governed by different rules. Petitioner's remedy thus was to file a new petition for dissolution and liquidation either with the SEC or the trial court.

When the case was elevated to the CA, the petition was dismissed affirming that under Sec. 121 of the Corporation Code, the SEC had jurisdiction to hear the petition for dissolution and liquidation. On motion for reconsideration, the CA remanded the case to the SEC for proceedings under Sec. 121 of the Corporation Code. The CA denied the motion for reconsideration filed by the respondent creditor, who then filed a petition for review with this Court.

We ruled that the SEC observed the correct procedure under the present law, in cases where it merely retained jurisdiction over pending cases for suspension of payments/rehabilitation, thus:

Republic Act No. 8799 (RA 8799) transferred to the appropriate regional trial courts the SEC's jurisdiction defined under Section 5(d) of Presidential Decree No. 902-A. Section 5.2 of RA 8799 provides:

The Commission's jurisdiction over all cases enumerated under Sec. 5 of Presidential Decree No. 902-A is hereby transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court: Provided, That the Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over these cases. The Commission shall retain jurisdiction over pending cases involving intra-corporate disputes submitted for final resolution which should be resolved within one (1) year from the enactment of this Code. The Commission shall retain jurisdiction over pending suspension of payments/rehabilitation cases filed as of 30 June 2000 until finally disposed. (Emphasis supplied)

The SEC assumed jurisdiction over CMC's petition for suspension of payment and issued a suspension order on 2 April 1996 after it found CMC's petition to be sufficient in form and substance. While CMC's petition was still pending with the SEC as of 30 June 2000, it was finally disposed of on 29 November 2000 when the SEC issued its Omnibus Order directing the dissolution of CMC and the transfer of the liquidation proceedings before the appropriate trial court. The SEC finally disposed of CMC's petition for suspension of payment when it determined that CMC could no longer be successfully rehabilitated.

However, the SEC's jurisdiction does not extend to the liquidation of a corporation. While the SEC has jurisdiction to order the dissolution of a corporation, jurisdiction over the liquidation of the corporation now pertains to the appropriate regional trial courts. This is the reason why the SEC, in its 29 November 2000 Omnibus Order, directed that "the proceedings on and implementation of the order of liquidation be commenced at the Regional Trial Court to which this case shall be transferred." This is the correct procedure because the liquidation of a corporation requires the settlement of claims for and against the corporation, which clearly falls under the jurisdiction of the regular courts. The trial court is in the best position to convene all the creditors of the corporation, ascertain their claims, and determine their preferences.[80] (Additional emphasis supplied.)

In view of the foregoing, the SEC should now be directed to transfer this case to the proper RTC which shall supervise the liquidation proceedings under Sec. 122 of the Corporation Code. Under Sec. 6 (d) of P.D. 902-A, the SEC is empowered, on the basis of the findings and recommendations of the management committee or rehabilitation receiver, or on its own findings, to determine that the continuance in business of a debtor corporation under suspension of payment or rehabilitation would not be feasible or profitable nor work to the best interest of the stockholders, parties-litigants, creditors, or the general public, order the dissolution of such corporation and its remaining assets liquidated accordingly. As mentioned earlier, the procedure is governed by Rule VI of the SEC Rules of Procedure on Corporate Recovery.

However, R.A. No. 10142[81] otherwise known as the Financial Rehabilitation and Insolvency Act (FRIA) of 2010, now provides for court proceedings in the rehabilitation or liquidation of debtors, both juridical and natural persons, in a manner that will "ensure or maintain certainty and predictability in commercial affairs, preserve and maximize the value of the assets of these debtors, recognize creditor rights and respect priority of claims, and ensure equitable treatment of creditors who are similarly situated." Considering that this case was still pending when the new law took effect last year, the RTC to which this case will be transferred shall be guided by Sec. 146 of said law, which states:

SEC. 146. Application to Pending Insolvency, Suspension of Payments and Rehabilitation Cases. - This Act shall govern all petitions filed after it has taken effect. All further proceedings in insolvency, suspension of payments and rehabilitation cases then pending, except to the extent that in opinion of the court their

application would not be feasible or would work injustice, in which event the procedures set forth in prior laws and regulations shall apply.

WHEREFORE, the petitions for review on certiorari are DENIED. The Decision dated May 26, 2004 and Resolution dated November 4, 2004 of the Court of Appeals in CA-G.R. SP No. 73195 are hereby AFFIRMED with MODIFICATION in that the Securities and Exchange Commission is hereby ordered to TRANSFER SEC Case No. 2556 to the appropriate Regional Trial Court which is hereby DIRECTED to supervise the liquidation of Ruby Industrial Corporation under the provisions of R.A. No. 10142.

With costs against the petitioners.

SO ORDERED.

Carpio Morales, (Chairperson), Brion, Bersamin, and Abad,[*] JJ., concur.

[*] Designated additional member per Special Order No. 997 dated June 6, 2011.

[1] G.R. Nos. 124185-87, January 20, 1998, 284 SCRA 445.

[2] CA rollo, pp. 95-111. Decision dated April 27, 1989, penned by Associate Justice Cecilio L. Pe and concurred in by Associate Justices Vicente V. Mendoza (now a retired Member of this Court) and Pedro A. Ramirez.

[3] Id. at 117-124. Penned by Associate Justice Jose C. Campos, Jr. and concurred in by Associate Justices Oscar M. Herrera and Artemon D. Luna.

[4] Id. at 125.

[5] Id. at 243-267. Penned by Associate Justice Consuelo Ynares-Santiago (now a retired Member of this Court) and concurred in by Associate Justices Antonio M. Martinez and Ruben T. Reyes.

[6] Id. at 269-287.

[7] Supra note 1.

[8] Id. at 455-460.

[9] Id. at 461-462.

[10] SEC records (Vol. 10), p. 3488.

[11] Id. at 3533-3535.

[12] Id. at 3545-3549.

[13] CA rollo, p. 345.

[14] Id. at 337-344.

[15] Id. at 346-355.

[16] Rollo (G.R. No. 165929), pp. 1340-1345.

[17] CA rollo, pp. 127-136.

[18] Rollo (G.R. No. 165929), pp. 1342-1343.

[19] Id. at 1342.

[20] SEC records (Vol. 11), pp. 3586-3587.

[21] Id. at 3585.

[22] Id. at 3589-3598.

[23] Id. at 3550-3575.

[24] Id. at 3622-3625.

[25] Id. at 3576-3580.

[26] Id. at 3611-3618.

[27] Id. at 3626-3629.

[28] Id. at 3640-3665.

[29] Id. at 3687-3695.

[30] Id. at 3701-3702, 3706.

[31] Id. at 3697-3700.

[32] Id. at 3829-3834.

[33] Id. at 3838-3842.

[34] Id. at 3745-3763.

[35] Supra note 33.

[36] Id. at 3843-3848.

[37] Id. at 3849-3868.

[38] Id. at 3870-3871.

[39] Id. at 3872-3919.

[40] Id. at 3927.

[41] SEC records (Vol. 12), pp. 4308-4318.

[42] Rollo (G.R. No. 165929), pp. 83-89.

[43] Id. at 88-89.

[44] Id. at 87-88.

[45] Id. at 38-67.

[46] Id. at 65-66.

[47] G.R. Nos. 80908 & 80909, May 24, 1989, 173 SCRA 550, cited in *Ruby Industrial Corporation v. Court of Appeals*, supra note 1, at 462-463.

[48] Rollo (G.R. No. 165887), p. 11.

- [49] Supra note 1, at 462-463.
- [50] Rollo (G.R. No. 165887), pp. 719-721.
- [51] Chua v. Court of Appeals, G.R. No. 150793, November 19, 2004, 443 SCRA 259, 267.
- [52] Western Institute of Technology, Inc. v. Salas, G.R. No. 113032, August 21, 1997, 278 SCRA 216, 225.
- [53] R.N. Symaco Trading Corporation v. Santos, G.R. No. 142474, August 18, 2005, 467 SCRA 312, 329.
- [54] Jose Campos, Jr. & Maria Clara L. Campos, The Corporation Code: Comments, Notes and Selected Cases, Vol. I (1990 ed.), p. 820, citing Gamboa v. Victoriano, No. L-40620, May 5, 1979, 90 SCRA 40, 47.
- [55] Approved on December 21, 1999.
- [56] Rollo (G.R. No. 165887), p. 61.
- [57] SEC records (Vol. 12), pp. 4079-4080.
- [58] Id. at 4288-4289.
- [59] Corporation Code, Sec. 36, par. 6.
- [60] Dee v. Securities and Exchange Commission, G.R. Nos. 60502 and 63922, July 16, 1991, 199 SCRA 238, 252.
- [61] CA rollo, pp. 263-266.
- [62] SEC records (Vol. 9), pp. 2955-2965, 2842-2850, 2976-2985, 3058-3065.
- [63] SEC records (Vol. 7), p. 2156.
- [64] SEC records (Vol. 13), pp. 4403, 4408 and 4443.
- [65] Jose Campos, Jr. & Maria Clara L. Campos, The Corporation Code: Comments, Notes and Selected Cases, Vol. II (1990 ed.), p. 58.
- [66] Id. at 62-63.
- [67] CA rollo, p. 266.
- [68] Corporation Code, Sec. 37.
- [69] China Banking Corporation and Kahn v. M. Michelin & Cie, 58 Phil. 261, 268 (1933).
- [70] Supra note 65, at 415.
- [71] See Villanueva, Philippine Corporate Law (2010 ed.), p. 841, citing Sec. 11, Corporation Code; Philippine National Bank v. CFI of Rizal, Pasig, Br. XXI, G.R. No. 63201, May 27, 1992, 209 SCRA 294.
- [72] Sec. 1-2, Rules of Procedure on Corporate Recovery.
- [73] Rollo (G.R. No. 165887), p. 744.
- [74] Supra note 1, at 455, citing Alejandro v. Court of Appeals, G.R. Nos. 84572-73, November 27, 1990, 191 SCRA 700, 709-710; Pajo, etc., et al. v. Ago and Ortiz, etc., 108 Phil. 905, 915-916 (1960) and No. L-32255, January 30, 1973, 49 SCRA 212, 220.

[75] Union Bank of the Philippines v. ASB Development Corporation, G.R. No. 172895, July 30, 2008, 560 SCRA 578, 600, citing People v. Pinuila, et al., 103 Phil. 992, 999 (1958).

[76] Rollo (G.R. No. 165887), p. 62.

[77] G.R. No. 160727, June 26, 2007, 525 SCRA 672, 682-683.

[78] SEC. 5. In addition to the regulatory and adjudicative functions of the [SEC] over corporations ... under existing laws ... decrees, it shall have original and exclusive jurisdiction to hear and decide cases involving:

x x x x

d) Petitions of corporations, partnerships or associations to be declared in the state of suspension of payments in cases where ... [it] possesses sufficient property to cover all its debts but foresees the impossibility of meeting them when they respectively fall due or in cases where ... [it] 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.

[79] G.R. No. 152580, June 26, 2008, 555 SCRA 465.

[80] Id. at 473-474.

[81] Lapsed into law on July 18, 2010 without the signature of the President, in accordance with Article VI, Section 27 (1) of the Constitution.

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.