CEMCO HOLDINGS, INC., PETITIONER, VS. NATIONAL LIFE INSURANCE COMPANY OF THE PHILIPPINES, INC., RESPONDENT.

G.R. NO. 171815. August 07, 2007

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

This Petition for Review under Rule 45 of the Rules of Court seeks to reverse and set aside the 24 October 2005 Decision[1] and the 6 March 2006 Resolution[2] of the Court of Appeals in CA-G.R. SP No. 88758 which affirmed the judgment[3] dated 14 February 2005 of the Securities and Exchange Commission (SEC) finding that the acquisition of petitioner Cemco Holdings, Inc. (Cemco) of the shares of stock of Bacnotan Consolidated Industries, Inc. (BCI) and Atlas Cement Corporation (ACC) in Union Cement Holdings Corporation (UCHC) was covered by the Mandatory Offer Rule under Section 19 of Republic Act No. 8799, otherwise known as the Securities Regulation Code.

The Facts

Union Cement Corporation (UCC), a publicly-listed company, has two principal stockholders - UCHC, a non-listed company, with shares amounting to 60.51%, and petitioner Cemco with 17.03%. Majority of UCHC's stocks were owned by BCI with 21.31% and ACC with 29.69%. Cemco, on the other hand, owned 9% of UCHC stocks.

In a disclosure letter dated 5 July 2004, BCI informed the Philippine Stock Exchange (PSE) that it and its subsidiary ACC had passed resolutions to sell to Cemco BCI's stocks in UCHC equivalent to 21.31% and ACC's stocks in UCHC equivalent to 29.69%.

In the PSE Circular for Brokers No. 3146-2004 dated 8 July 2004, it was stated that as a result of petitioner Cemco's acquisition of BCI and ACC's shares in UCHC, petitioner's total beneficial ownership, direct and indirect, in UCC has increased by 36% and amounted to at least 53% of the shares of UCC, to wit[4]:

Particulars Percentage

Existing shares of Cemco in UCHC 9%

Acquisition by Cemco of BCI's and ACC's shares in UCHC 51%

Total stocks of Cemco in UCHC 60%

Percentage of UCHC ownership in UCC 60%

Indirect ownership of Cemco in UCC 36%

Direct ownership of Cemco in UCC 17%

Total ownership of Cemco in UCC 53%

As a consequence of this disclosure, the PSE, in a letter to the SEC dated 15 July 2004, inquired as to whether the Tender Offer Rule under Rule 19 of the Implementing Rules of the Securities Regulation Code is not applicable to the purchase by petitioner of the majority of shares of UCC.

In a letter dated 16 July 2004, Director Justina Callangan of the SEC's Corporate Finance Department responded to the query of the PSE that while it was the stance of the department that the tender offer rule was not applicable, the matter must still have to be confirmed by the SEC en banc.

Thereafter, in a subsequent letter dated 27 July 2004, Director Callangan confirmed that the SEC en banc had resolved that the Cemco transaction was not covered by the tender offer rule.

On 28 July 2004, feeling aggrieved by the transaction, respondent National Life Insurance Company of the Philippines, Inc., a minority stockholder of UCC, sent a letter to Cemco demanding the latter to comply with the rule on mandatory tender offer. Cemco, however, refused.

On 5 August 2004, a Share Purchase Agreement was executed by ACC and BCI, as sellers, and Cemco, as buyer.

On 12 August 2004, the transaction was consummated and closed.

On 19 August 2004, respondent National Life Insurance Company of the Philippines, Inc. filed a complaint with the SEC asking it to reverse its 27 July 2004 Resolution and to declare the purchase agreement of Cemco void and praying that the mandatory tender offer rule be applied to its UCC shares. Impleaded in the complaint were Cemco, UCC, UCHC, BCI and ACC, which were then required by the SEC to file their respective comment on the complaint. In their comments, they were uniform in arguing that the tender offer rule applied only to a direct acquisition of the shares of the listed company and did not extend to an indirect acquisition arising from the purchase of the shares of a holding company of the listed firm.

In a Decision dated 14 February 2005, the SEC ruled in favor of the respondent by reversing and setting aside its 27 July 2004 Resolution and directed petitioner Cemco to make a tender offer for UCC shares to respondent and other holders of UCC shares similar to the class held by UCHC in accordance with Section 9(E), Rule 19 of the Securities Regulation Code.

Petitioner filed a petition with the Court of Appeals challenging the SEC's jurisdiction to take cognizance of respondent's complaint and its authority to require Cemco to make a tender offer for UCC shares, and arguing that the tender offer rule does not apply, or that the SEC's re-interpretation of the rule could not be made to retroactively apply to Cemco's purchase of UCHC shares.

The Court of Appeals rendered a decision affirming the ruling of the SEC. It ruled that the SEC has jurisdiction to render the questioned decision and, in any event, Cemco was barred by estoppel from questioning the SEC's jurisdiction. It, likewise, held that the tender offer requirement under the Securities Regulation Code and its Implementing Rules applies to Cemco's purchase of UCHC stocks. The decretal portion of the said Decision reads:

> IN VIEW OF THE FOREGOING, the assailed decision of the SEC is AFFIRMED, and the preliminary injunction issued by the Court LIFTED.[5]

Cemco filed a motion for reconsideration which was denied by the Court of Appeals.

Hence, the instant petition.

In its memorandum, petitioner Cemco raises the following issues:

> I.

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ASSUMING ARGUENDO THAT THE SEC HAS JURISDICTION OVER NATIONAL LIFE'S COMPLAINT AND THAT THE SEC'S RE-INTERPRETATION OF THE TENDER OFFER RULE IS CORRECT, WHETHER OR NOT THAT REINTERPRETATION CAN BE APPLIED RETROACTIVELY TO CEMCO'S PREJUDICE.

II.

WHETHER OR NOT THE SEC HAS JURISDICTION TO ADJUDICATE THE DISPUTE BETWEEN THE PARTIES A QUO OR TO RENDER JUDGMENT REQUIRING CEMCO TO MAKE A TENDER OFFER FOR UCC SHARES.

III.

WHETHER OR NOT CEMCO'S PURCHASE OF UCHC SHARES IS SUBJECT TO THE TENDER OFFER REQUIREMENT.

IV.

WHETHER OR NOT THE SEC DECISION, AS AFFIRMED BY THE CA DECISION, IS AN INCOMPLETE JUDGMENT WHICH PRODUCED NO EFFECT.[6]

Simply stated, the following are the issues:

- Whether or not the SEC has jurisdiction over respondent's complaint and to require Cemco to make a tender offer for respondent's UCC shares.

- Whether or not the rule on mandatory tender offer applies to the indirect acquisition of shares in a listed company, in this case, the indirect acquisition by Cemco of 36% of UCC, a publicly-listed company, through its purchase of the shares in UCHC, a non-listed company.

- Whether or not the questioned ruling of the SEC can be applied retroactively to Cemco's transaction which was consummated under the authority of the SEC's prior resolution.

On the first issue, petitioner Cemco contends that while the SEC can take cognizance of respondent's complaint on the alleged violation by petitioner Cemco of the mandatory tender offer requirement under Section 19 of Republic Act No. 8799, the same statute does not vest the SEC with jurisdiction to adjudicate and determine the rights and obligations of the parties since, under the same statute, the SEC's authority is purely administrative. Having been vested with purely administrative authority, the SEC can only impose administrative sanctions such as the imposition of administrative fines, the suspension or revocation of registrations with the SEC, and the like. Petitioner stresses that there is nothing in the statute which authorizes the SEC to issue orders granting affirmative reliefs. Since the SEC's order commanding it to make a tender offer is an affirmative relief fixing the respective rights and obligations of parties, such order is void.

Petitioner further contends that in the absence of any specific grant of jurisdiction by Congress, the SEC cannot, by mere administrative regulation, confer on itself that jurisdiction.

Petitioner's stance fails to persuade.

In taking cognizance of respondent's complaint against petitioner and eventually rendering a judgment which ordered the latter to make a tender offer, the SEC was acting pursuant to Rule 19(13) of the Amended Implementing Rules and Regulations of the Securities Regulation Code, to wit:

- Violation

If there shall be violation of this Rule by pursuing a purchase of equity shares of a public company at threshold

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> amounts without the required tender offer, the Commission, upon complaint, may nullify the said acquisition and direct the holding of a tender offer. This shall be without prejudice to the imposition of other sanctions under the Code.

The foregoing rule emanates from the SEC's power and authority to regulate, investigate or supervise the activities of persons to ensure compliance with the Securities Regulation Code, more specifically the provision on mandatory tender offer under Section 19 thereof.[7]

Another provision of the statute, which provides the basis of Rule 19(13) of the Amended Implementing Rules and Regulations of the Securities Regulation Code, is Section 5.1(n), viz:

> [T]he Commission shall have, among others, the following powers and functions:
>
> x x x x
>
> (n) Exercise such other powers as may be provided by law as well as those which may be implied from, or which are necessary or incidental to the carrying out of, the express powers granted the Commission to achieve the objectives and purposes of these laws.

The foregoing provision bestows upon the SEC the general adjudicative power which is implied from the express powers of the Commission or which is incidental to, or reasonably necessary to carry out, the performance of the administrative duties entrusted to it. As a regulatory agency, it has the incidental power to conduct hearings and render decisions fixing the rights and obligations of the parties. In fact, to deprive the SEC of this power would render the agency inutile, because it would become powerless to regulate and implement the law. As correctly held by the Court of Appeals:

> We are nonetheless convinced that the SEC has the competence to render the particular decision it made in this case. A definite inference may be drawn from the provisions of the SRC that the SEC has the authority not only to investigate complaints of violations of the tender offer rule, but to adjudicate certain rights and obligations of the contending parties and grant appropriate reliefs in the exercise of its regulatory functions under the SRC. Section 5.1 of the SRC allows a general grant of adjudicative powers to the SEC which may be implied from or are necessary or incidental to the carrying out of its express powers to achieve the objectives and purposes of the SRC. We must bear in mind in interpreting the powers and functions of the SEC that the law has made the SEC primarily a regulatory body with the incidental power to conduct administrative hearings and make decisions. A regulatory body like the SEC may conduct hearings in the exercise of its regulatory powers, and if the case involves violations or conflicts in connection with the performance of its regulatory functions, it will have the duty and authority to resolve the dispute for the best interests of the public.[8]

For sure, the SEC has the authority to promulgate rules and regulations, subject to the limitation that the same are consistent with the declared policy of the Code. Among them is the protection of the investors and the minimization, if not total elimination, of fraudulent and manipulative devises. Thus, Subsection 5.1(g) of the law provides:

Prepare, approve, amend or repeal rules, regulations and orders, and issue opinions and provide guidance on and supervise compliance with such rules, regulations and orders.

Also, Section 72 of the Securities Regulation Code reads:

> 72.1. x x x To effect the provisions and purposes of this Code, the Commission may issue, amend, and rescind such rules and regulations and orders necessary or appropriate, x x x.
>
> 72.2. The Commission shall promulgate rules and regulations providing for reporting, disclosure and the

> prevention of fraudulent, deceptive or manipulative practices in connection with the purchase by an issuer, by tender offer or otherwise, of and equity security of a class issued by it that satisfies the requirements of Subsection 17.2. Such rules and regulations may require such issuer to provide holders of equity securities of such dates with such information relating to the reasons for such purchase, the source of funds, the number of shares to be purchased, the price to be paid for such securities, the method of purchase and such additional information as the Commission deems necessary or appropriate in the public interest or for the protection of investors, or which the Commission deems to be material to a determination by holders whether such security should be sold.

The power conferred upon the SEC to promulgate rules and regulations is a legislative recognition of the complexity and the constantly-fluctuating nature of the market and the impossibility of foreseeing all the possible contingencies that cannot be addressed in advance. As enunciated in Victorias Milling Co., Inc. v. Social Security Commission[9]:

> Rules and regulations when promulgated in pursuance of the procedure or authority conferred upon the administrative agency by law, partake of the nature of a statute, and compliance therewith may be enforced by a penal sanction provided in the law. This is so because statutes are usually couched in general terms, after expressing the policy, purposes, objectives, remedies and sanctions intended by the legislature. The details and the manner of carrying out the law are often times left to the administrative agency entrusted with its enforcement. In this sense, it has been said that rules and regulations are the product of a delegated power to create new or additional legal provisions that have the effect of law.

Moreover, petitioner is barred from questioning the jurisdiction of the SEC. It must be pointed out that petitioner had participated in all the proceedings before the SEC and had prayed for affirmative relief. In fact, petitioner defended the jurisdiction of the SEC in its Comment dated 15 September 2004, filed with the SEC wherein it asserted:

> This Honorable Commission is a highly specialized body created for the purpose of administering, overseeing, and managing the corporate industry, share investment and securities market in the Philippines. By the very nature of its functions, it dedicated to the study and administration of the corporate and securities laws and has necessarily developed an expertise on the subject. Based on said functions, the Honorable Commission is necessarily tasked to issue rulings with respect to matters involving corporate matters and share acquisitions. Verily when this Honorable Commission rendered the Ruling that " ... the acquisition of Cemco Holdings of the majority shares of Union Cement Holdings, Inc., a substantial stockholder of a listed company, Union Cement Corporation, is not covered by the mandatory tender offer requirement of the SRC Rule 19," it was well within its powers and expertise to do so. Such ruling shall be respected, unless there has been an abuse or improvident exercise of authority.[10]

Petitioner did not question the jurisdiction of the SEC when it rendered an opinion favorable to it, such as the 27 July 2004 Resolution, where the SEC opined that the Cemco transaction was not covered by the mandatory tender offer rule. It was only when the case was before the Court of Appeals and after the SEC rendered an unfavorable judgment against it that petitioner challenged the SEC's competence. As articulated in Ceroferr Realty Corporation v. Court of Appeals[11]:

> While the lack of jurisdiction of a court may be raised at any stage of an action, nevertheless, the party raising such question may be estopped if he has actively taken part in the very proceedings which he questions and he only objects to the court's jurisdiction because the judgment or the order subsequently rendered is adverse to him.

On the second issue, petitioner asserts that the mandatory tender offer rule applies only to direct acquisition of shares in the public company.

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This contention is not meritorious.

> Tender offer is a publicly announced intention by a person acting alone or in concert with other persons to acquire equity securities of a public company.[12] A public company is defined as a corporation which is listed on an exchange, or a corporation with assets exceeding P50,000,000.00 and with 200 or more stockholders, at least 200 of them holding not less than 100 shares of such company.[13] Stated differently, a tender offer is an offer by the acquiring person to stockholders of a public company for them to tender their shares therein on the terms specified in the offer.[14] Tender offer is in place to protect minority shareholders against any scheme that dilutes the share value of their investments. It gives the minority shareholders the chance to exit the company under reasonable terms, giving them the opportunity to sell their shares at the same price as those of the majority shareholders.[15]

Under Section 19 of Republic Act No. 8799, it is stated:

Tender Offers. 19.1. (a) Any person or group of persons acting in concert who intends to acquire at least fifteen percent (15%) of any class of any equity security of a listed corporation or of any class of any equity security of a corporation with assets of at least Fifty million pesos (P50,000,000.00) and having two hundred (200) or more stockholders with at least one hundred (100) shares each or who intends to acquire at least thirty percent (30%) of such equity over a period of twelve (12) months shall make a tender offer to stockholders by filing with the Commission a declaration to that effect; and furnish the issuer, a statement containing such of the information required in Section 17 of this Code as the Commission may prescribe. Such person or group of persons shall publish all requests or invitations for tender, or materials making a tender offer or requesting or inviting letters of such a security. Copies of any additional material soliciting or requesting such tender offers subsequent to the initial solicitation or request shall contain such information as the Commission may prescribe, and shall be filed with the Commission and sent to the issuer not later than the time copies of such materials are first published or sent or given to security holders.

Under existing SEC Rules,[16] the 15% and 30% threshold acquisition of shares under the foregoing provision was increased to thirty-five percent (35%). It is further provided therein that mandatory tender offer is still applicable even if the acquisition is less than 35% when the purchase would result in ownership of over 51% of the total outstanding equity securities of the public company.[17]

The SEC and the Court of Appeals ruled that the indirect acquisition by petitioner of 36% of UCC shares through the acquisition of the non-listed UCHC shares is covered by the mandatory tender offer rule.

This interpretation given by the SEC and the Court of Appeals must be sustained.

The rule in this jurisdiction is that the construction given to a statute by an administrative agency charged with the interpretation and application of that statute is entitled to great weight by the courts, unless such construction is clearly shown to be in sharp contrast with the governing law or statute.[18] The rationale for this rule relates not only to the emergence of the multifarious needs of a modern or modernizing society and the establishment of diverse administrative agencies for addressing and satisfying those needs; it also relates to accumulation of experience and growth of specialized capabilities by the administrative agency charged with implementing a particular statute.[19]

The SEC and the Court of Appeals accurately pointed out that the coverage of the mandatory tender offer rule covers not only direct acquisition but also indirect acquisition or "any type of acquisition." This is clear from the discussions of the Bicameral Conference Committee on the Securities Act of 2000, on 17 July 2000.

> SEN. S. OSMEÑA. Eto ang mangyayari diyan, eh. Somebody controls 67% of the Company. Of course, he will pay a premium for the first 67%. Control yan, eh. Eh, kawawa yung mga maiiwan, ang 33% because the value

> of the stock market could go down, could go down after that, because there will (p. 41) be no more market. Wala nang gustong bumenta. Wala nang... I mean maraming gustong bumenta, walang gustong bumili kung hindi yung majority owner. And they will not buy. They already have 67%. They already have control. And this protects the minority. And we have had a case in Cebu wherein Ayala A who already owned 40% of Ayala B made an offer for another 40% of Ayala B without offering the 20%. Kawawa naman yung nakahawak ngayon ng 20%. Ang baba ng share sa market. But we did not have a law protecting them at that time.
>
> CHAIRMAN ROCO. So what is it that you want to achieve?
>
> SEN. S. OSMEÑA. That if a certain group achieves a certain amount of ownership in a corporation, yeah, he is obligated to buy anybody who wants to sell.
>
> CHAIRMAN ROCO. Pro-rata lang. (p. 42).
>
> x x x x
>
> REP. TEODORO. As long as it reaches 30, ayan na. Any type of acquisition just as long as it will result in 30... (p.50)... reaches 30, ayan na. Any type of acquisition just as long as it will result in 30, general tender, pro-rata.[20] (Emphasis supplied.)

Petitioner counters that the legislator's reference to "any type of acquisition" during the deliberations on the Securities Regulation Code does not indicate that congress meant to include the "indirect" acquisition of shares of a public corporation to be covered by the tender offer rule. Petitioner also avers that it did not directly acquire the shares in UCC and the incidental benefit of having acquired the control of the said public company must not be taken against it.

These arguments are not convincing. The legislative intent of Section 19 of the Code is to regulate activities relating to acquisition of control of the listed company and for the purpose of protecting the minority stockholders of a listed corporation. Whatever may be the method by which control of a public company is obtained, either through the direct purchase of its stocks or through an indirect means, mandatory tender offer applies. As appropriately held by the Court of Appeals:

> The petitioner posits that what it acquired were stocks of UCHC and not UCC. By happenstance, as a result of the transaction, it became an indirect owner of UCC. We are constrained, however, to construe ownership acquisition to mean both direct and indirect. What is decisive is the determination of the power of control. The legislative intent behind the tender offer rule makes clear that the type of activity intended to be regulated is the acquisition of control of the listed company through the purchase of shares. Control may [be] effected through a direct and indirect acquisition of stock, and when this takes place, irrespective of the means, a tender offer must occur. The bottomline of the law is to give the shareholder of the listed company the opportunity to decide whether or not to sell in connection with a transfer of control. x x x.[21]

As to the third issue, petitioner stresses that the ruling on mandatory tender offer rule by the SEC and the Court of Appeals should not have retroactive effect or be made to apply to its purchase of the UCHC shares as it relied in good faith on the letter dated 27 July 2004 of the SEC which opined that the proposed acquisition of the UCHC shares was not covered by the mandatory offer rule.

The argument is not persuasive.

The action of the SEC on the PSE request for opinion on the Cemco transaction cannot be construed as passing merits or giving approval to the questioned transaction. As aptly pointed out by the respondent, the letter dated 27 July 2004 of the SEC was nothing but an approval of the draft letter prepared by Director Callanga. There was no public hearing where interested parties could have been heard. Hence, it was not issued upon a definite and

concrete controversy affecting the legal relations of parties thereby making it a judgment conclusive on all the parties. Said letter was merely advisory. Jurisprudence has it that an advisory opinion of an agency may be stricken down if it deviates from the provision of the statute.[22] Since the letter dated 27 July 2004 runs counter to the Securities Regulation Code, the same may be disregarded as what the SEC has done in its decision dated 14 February 2005.

Assuming arguendo that the letter dated 27 July 2004 constitutes a ruling, the same cannot be utilized to determine the rights of the parties. What is to be applied in the present case is the subsequent ruling of the SEC dated 14 February 2005 abandoning the opinion embodied in the letter dated 27 July 2004. In Serrano v. National Labor Relations Commission,[23] an argument was raised similar to the case under consideration. Private respondent therein argued that the new doctrine pronounced by the Court should only be applied prospectively. Said postulation was ignored by the Court when it ruled:

> While a judicial interpretation becomes a part of the law as of the date that law was originally passed, this is subject to the qualification that when a doctrine of this Court is overruled and a different view is adopted, and more so when there is a reversal thereof, the new doctrine should be applied prospectively and should not apply to parties who relied on the old doctrine and acted in good faith. To hold otherwise would be to deprive the law of its quality of fairness and justice then, if there is no recognition of what had transpired prior to such adjudication.
>
> It is apparent that private respondent misconceived the import of the ruling. The decision in Columbia Pictures does not mean that if a new rule is laid down in a case, it should not be applied in that case but that said rule should apply prospectively to cases arising afterwards. Private respondent's view of the principle of prospective application of new judicial doctrines would turn the judicial function into a mere academic exercise with the result that the doctrine laid down would be no more than a dictum and would deprive the holding in the case of any force.
>
> Indeed, when the Court formulated the Wenphil doctrine, which we reversed in this case, the Court did not defer application of the rule laid down imposing a fine on the employer for failure to give notice in a case of dismissal for cause. To the contrary, the new rule was applied right then and there. x x x.

Lastly, petitioner alleges that the decision of the SEC dated 14 February 2005 is "incomplete and produces no effect."

This contention is baseless.

The decretal portion of the SEC decision states:

> In view of the foregoing, the letter of the Commission, signed by Director Justina F. Callangan, dated July 27, 2004, addressed to the Philippine Stock Exchange is hereby REVERSED and SET ASIDE. Respondent Cemco is hereby directed to make a tender offer for UCC shares to complainant and other holders of UCC shares similar to the class held by respondent UCHC, at the highest price it paid for the beneficial ownership in respondent UCC, strictly in accordance with SRC Rule 19, Section 9(E).[24]

A reading of the above ruling of the SEC reveals that the same is complete. It orders the conduct of a mandatory tender offer pursuant to the procedure provided for under Rule 19(E) of the Amended Implementing Rules and Regulations of the Securities Regulation Code for the highest price paid for the beneficial ownership of UCC shares. The price, on the basis of the SEC decision, is determinable. Moreover, the implementing rules and regulations of the Code are sufficient to inform and guide the parties on how to proceed with the mandatory tender offer.

WHEREFORE, the Decision and Resolution of the Court of Appeals dated 24 October 2005 and 6 March 2006,

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respectively, affirming the Decision dated 14 February 2005 of the Securities and Exchange Commission En Banc, are hereby AFFIRMED. Costs against petitioner.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, and Nachura, JJ., concur.

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[1] Penned by Associate Justice Mario L. Guariña III with Associate Justices Rebecca De Guia-Salvador and Arturo G. Tayag, concurring. Rollo, pp. 68-79.

[2] Id. at 119.

[3] Id. at 254-264.

[4] Id. at 71-72.

[5] Id. at 78.

[6] Id. at 576-578.

[7] Section 5, Subsection 5.1. (d) of the Securities Regulation Code provides:

[T]he Commission shall have, among others, the following powers and functions:
x x x x
(d) Regulate, investigate or supervise the activities of persons to ensure compliance.

[8] Rollo, p. 75.

[9] 114 Phil. 555, 558 (1962).

[10] Rollo, pp. 182-183.

[11] 426 Phil. 522, 530 (2002).

[12] The Philippine Securities Regulation Code (Annotated), Rafael A. Morales (2005 Ed.), p. 153.

[13] Id.

[14] Id.

[15] Securities Regulation Code (Republic Act No. 8799) Annotated with Implementing Rules and Regulations, Lucila M. Decasa (First Edition, 2004) p. 64.

[16] Rule 19(2) of the Amended Implementing Rules and Regulations of the Securities Regulation Code dated 30 December 2003 states:

- Mandatory tender offers

- Any person or group of persons acting in concert, who intends to acquire thirty-five percent (35%) or more of equity shares in a public company shall disclose such intention and contemporaneously make a tender offer for the percent sought to all holders of such class, subject to paragraph (9)(E) of this Rule.

In the event that the tender offer is oversubscribed, the aggregate amount of securities to be acquired at the close of such tender offer shall be proportionately distributed across both selling shareholder with whom the acquirer may have been in private negotiations and minority shareholders.

- Any person or group of persons acting in concert, who intends to acquire thirty-five percent (35%) or more of equity shares in a public company in one or more transactions within a period of twelve (12) months, shall be required to make a tender offer to all holders of such class for the number of shares so acquired within the said period.

- If any acquisition of even less than thirty-five percent (35%) would result in ownership of over fifty-one percent (51%) of the total outstanding equity securities of a public company, the acquirer shall be required to make a tender offer under this Rule for all the outstanding equity securities to all remaining stockholders of the said company at a price supported by a fairness opinion provided by an independent financial advisor or equivalent third party. The acquirer in such a tender offer shall be required to accept any and all securities thus tendered.

[17] Id.

[18] Nestle Philippines, Inc. v. Court of Appeals, G.R. No. 86738, 13 November 1991, 203 SCRA 504, 510.

[19] Id. at 510-511.

[20] Rollo, pp. 256-257.

[21] Id. at 76-77.

[22] San Juan de Dios Hospital Employees Association-AFW v. National Labor Relations Commission, 346 Phil. 1003, 1010 (1997).

[23] 387 Phil. 345, 357 (2000).

[24] Rollo, p. 263.

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