

**METROPOLITAN BANK & TRUST COMPANY, PETITIONER, VS.
FORTUNA PAPER MILL & PACKAGING CORPORATION,
RESPONDENT.**

G.R. No. 190800. November 07, 2018

Ponente: REYES, A., JR., J.

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REYES, A., JR., J.:

Challenged before this Court via this Petition for Review[1] under Rule 45 of the Rules of Court is the Decision[2] dated July 7, 2009 of the Court of Appeals (CA) in CA-G.R. SP No. 102148, which dismissed the petition for review filed by petitioner Metropolitan Bank and Trust Company (MBTC). Likewise challenged is the Resolution[3] dated January 4, 2010 of the CA denying the Motion for Reconsideration likewise filed by MBTC.

In the said decision, the CA found no error in the assailed Order[4] dated December 20, 2007 of the Regional Trial Court (RTC) of Malabon City, Branch 74, in SEC Case No. S7-002-MN granting the Petition for Corporate Rehabilitation of respondent Fortuna Paper Mill and Packaging Corporation (Fortuna) considering the latter complied with the qualifications and minimum requirements provided for under Rule 4, Sections 1 and 5 of the Interim Rules of Procedure on Corporate Rehabilitation (Interim Rules).

The Antecedent Facts

MBTC is a domestic banking corporation organized and existing under the laws of the Republic of the Philippines, and who extended various credit accommodations and loan facilities to Fortuna. Fortuna, before the closure of its business and cessation of its operations in 2006, was organized to manufacture special and craft papers from, waste and scrap materials, and which it used to sell its products principally to manufacturers of corrugated boxes, cement paper bags, and other stationary paper products.[5]

The credit accommodations and loan facilities extended by MBTC to Fortuna principally amounted to Php 259,981,915.33. In order to secure these obligations, Fortuna mortgaged to MBTC its real and movable properties as well as several pieces of realty owned by several sister companies.[6]

Fortuna eventually ended up defaulting on its obligations to MBTC, and failed to pay said indebtedness along with the interests and penalties despite repeated demands on the part of MBTC. Around this same period, the Manila Electric Company (Meralco) filed a criminal complaint against Fortuna for pilferage of electricity and cut off the latter's electrical supply. Though Fortuna and Meralco eventually executed a compromise agreement that resulted in the reconnection of Fortuna's power supply, due to alleged dire financial straits and labor problems, Fortuna subsequently and for the second time defaulted in its payments. This led Meralco to once again disconnect Fortuna's supply of electricity, a turn of events which persisted up until the time the petition was filed.[7]

Instead of paying the overdue obligations to MBTC, Fortuna filed on June 21, 2007 a Petition for Corporate Rehabilitation (Rehabilitation Petition) with the RTC of Malabon, Branch 74. Attached therein was Fortuna's

proposed Rehabilitation Plan, which consisted mainly of (i) the resumption and continuance of its business, to be made possible by the entry of a supposed investor and a debt moratorium on principal interest, and (ii) entry into the business condominium development.[8] The salient features of the proposed Rehabilitation Plan are the following:

30.a) PROGRAM I – Restart and Continuance of Business of Fortuna with Implementation of Specific Plans of Action – The general plan is to continue the operation of Fortuna. These will be implemented with the following features:

(1) Entry of Investor for Fortuna. The of (sic) Policity (sic) Enterprises Ltd. of Hongkong has been identified in buying into Fortuna.

(2) Debt moratorium on principal and interest for two years and debt restructuring for a longer term or tenure and reduced interest rates. It is proposed that interest rates for a certain period within the rehabilitation period be reduced.

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Thus, the Program I of the Rehabilitation Plan calls for the forbearance of the creditors/bank to the longer payment period of eight (8) years with the provision for acceleration of payment as cash becomes available from operation or from investors. Reduction of interest rates to 2% on the first two years; then 4% thereafter until the eight year is also an essential component of the Rehabilitation Plan because:

1. Higher interest rates do not encourage the major stockholders to put in more capital and take additional risks;
2. Reduction is customary in rehabilitation or liquidation proceedings when the issue is self-preservation and survival of the debtor;
3. The reduced interest rates are reflective of a very reasonable remedial interest rate;

With the relief from debt burdens and threats of paralyzing foreclosures by the foregoing modifications of its debt-structure, and also as part of its rehabilitation plan, FORTUNA shall implement the following key plans of action to bolster its businesses; detailed as follows:

a. The entry of new investor shall pump in at least Php 70,000.000 into the Company; a communication identifying this new investor is hereto attached as Appendix "B";

b. The cash infusion shall be used principally to: (i) convert the bunker-fired boiler to cheaper coal; (ii) purchase of raw materials; (iii) operation of machines at or near maximum capacities; and (iv) settlement of liabilities to Meralco to assure power supply.

30.b) PROGRAM II – Expansion to Other Businesses to Take Advantage of Best-Use of Realty Assets – The Business Plan for the Rehabilitation of FORTUNA has the general premise that the present business of the Petitioner will remain, and in fact, will be expanded, considering that it is still viable.

The plans for additional or supplementary new businesses are hereby adopted only to augment the old business and serve as a cushion in the event that there are adverse environmental and business conditions that are not foreseen. This is also being done to ensure that the settlement of all obligations will occur at the programmed period of eight years or even shorter.

This supplementary business consists of developing some of the realty assets of the Petitioner and/or its sister companies into love-rise (sic) or medium-rise residential condominium under the Pag-IBIG City Program of the Home Mutual Development Fund (Pag-IBIG). Under this Program, the Pag-IBIG shall purchase the completed residential units at 70% of its appraised value and constitute the developer as the marketing agent. This way, the payment to the contractor, who shall complete the building on a turn-key basis, is assured.[9]

Finding the Rehabilitation Petition sufficient in form and substance, on June 27, 2007, the RTC issued a Stay Order setting the initial hearing involving the Rehabilitation Petition on August 6, 2007 and directing all of Fortuna's creditors and other interested parties to file their verified comments/opposition.[10]

The court likewise ordered for the appointment of a rehabilitation receiver pursuant to Rule 4, Section 6 of the Interim Rules. On July 13, 2007, Atty. Rafael F. Teston (Atty. Teston) accepted his appointment as rehabilitation receiver.[11]

On August 6, 2007, MBTC filed its Comment/Opposition[12] to the Rehabilitation Petition and prayed for its dismissal based on the following grounds: (1) Fortuna was not qualified for corporate rehabilitation under Section 1 of Rule 4 of the Interim Rules; (2) the petition was fatally defective for non-compliance with the minimum requirements of Section 5 of Rule 4 of the Interim Rules; and (3) the petition was filed solely for the purpose of unjustly delaying the payment of its debt obligations.[13]

Despite opposition, the Rehabilitation Petition was given due course in an Order dated September 20, 2007. The RTC thus referred the same to Atty. Teston for the latter's evaluation and recommendations.[14]

After reviewing the same, Atty. Teston submitted a Rehabilitation Receiver's Report and Comments to the Rehabilitation Plan (Receiver's Report), the said report recommending that the proposed Rehabilitation Plan be adopted, but subject to the following timelines and benchmarks: (1) The prospective investor Polycity must complete its due diligence and begin its infusion of new cash for MBTC within nine (9) months from approval of the Rehabilitation Plan; and (2) The construction of the Classic Frames property must be initiated within twelve (12) months from approval of the Rehabilitation Plan and completed as set forth in the Plan.[15]

Ruling of the RTC

On the basis of this, the RTC issued an Order[16] dated December 20, 2007 approving the Rehabilitation Plan. The trial court found the proposed Rehabilitation Plan feasible and viable and noted Fortuna's effort to improve its financial standing by establishing a new business of realty development in Malabon City. The RTC held:

With respect to the rehabilitation plan, the Court finds the same feasible and viable. A moratorium period of two (2) years on the payment of its loans/obligations will enable [Fortuna] to generate additional capital/funds to continue its business operations. This is in line with [Fortuna's] intention to source fund from its internal operations, the growth of which is expected to favorably expand. To achieve this goal, an extension period for the payment of [Fortuna] is just and proper. This is precisely the main reason why [Fortuna] filed the instant petition as corporate rehabilitation can, in one way, be effected by suspension of payments of obligation for a certain period. Thereafter, payment of their loan/obligations could be ably resumed.

Further, the Court notes that [Fortuna] is in the process of establishing a new business of realty development in Malabon City using the 13,000 square meters property of its sister company, Classic Frames Corporation. Although the proposed project site is, as correctly pointed out by [Fortuna], not feasible at this time as it is inundated by flood during heavy rains, the on-going flood control project being undertaken by the government (CAMANAVA Flood Control Project) will solve this problem. As further pointed out by [Fortuna], residential development in Malabon is a feasible and marketable project. The Comprehensive Land Use Plan for the City of Malabon indicates that the community requires a substantial housing for its residents of all income groups. There is a housing deficiency of about 7,000 units for the lower-to-middle income class economic segment. The development of a modern residential condominium for the City's middle class priced at the level presented by the debtor is a welcome addition to the community's housing inventory. The HMDF has projected that such an inventory can be marketed easily. The realty company Oroquieta Properties, Inc. is willing to consider and to participate as the developer-contractor for the project. From this project, [Fortuna] expects to earn additional income which is a good source of cashflow for its operations.[17]

The dispositive portion of the order reads:

WHEREFORE, the Rehabilitation Plan filed with this Court and made as an Annex and integral part of this Order is hereby APPROVED. Petitioners are strictly enjoined to abide by its terms and conditions and they shall, unless directed otherwise, submit a quarterly report on the progress of the implementation of the Rehabilitation Plan. Further, and as prayed for, let the construction of the Valenzuela property be initiated within the twelve (12) months from this date and completed as set forth in the plan.[18]

Ruling of the CA

Aggrieved, MBTC filed a Petition for Review under Rule 43 with the CA seeking to set aside the RTC's order. The CA dismissed the petition as it found that the rehabilitation was feasible, and the opposition of the petitioning creditors was manifestly unreasonable.[19]

The dispositive portion of the Decision[20] dated July 7, 2009 reads, to wit:

WHEREFORE, premises considered, the petition for review is DISMISSED. The Order dated 20 December 2007 of the [RTC], Branch 74, City of Malabon in SEC Case No. S7-002-MN is AFFIRMED.

SO ORDERED.[21]

MBTC filed its Motion for Reconsideration to the decision of the CA, which was however denied by the latter through a Resolution[22] dated January 4, 2010.

Hence, this Petition, wherein MBTC prays that this Court reverse and set aside the decision of the CA and order the termination of the rehabilitation proceedings and the liquidation of Fortuna.

The Issue and Contention of the Parties

A perusal of the pleadings filed by the parties will show that the overlying issue in this case is whether or not the CA erred in affirming the Rehabilitation Plan approved by the RTC. MBTC advocates that the CA is mistaken, and anchors its contentions on the belief that Fortuna is not qualified to file a petition for rehabilitation under the Interim Rules.

MBTC argues that a corporation may petition that it be placed under rehabilitation only if it is in the financial condition of a debtor who foresees the majority of its debts and its failure to meet them. Thus, this element of foresight is allegedly wanting where a debtor has already failed to meet its debts that have fallen due, such as in the case of Fortuna. The unequivocal language of the provision, according to the interpretation of MBTC, shows the manifest intent on the part of the drafters to make a distinction between debtors already in default and those who are not, to the end that only the latter may petition to be placed under rehabilitation, and which means that no exception or condition should be introduced save that given expressly in the law.[23]

MBTC also contends that, notwithstanding the question of eligibility of Fortuna, the CA overlooked the many glaring and patent deficiencies of Fortuna's Rehabilitation Plan, which include the alleged absence of material financial commitments to support it.[24]

On the other hand, Fortuna in its Comment to the Petition, argues that a cursory reading of the Interim Rules reveals that MBTC's reading of the same is legally untenable and restrictive, and that the salient provision merely indicates the minimum conditions for a debtor to be able to file a Rehabilitation Petition.[25] As regards MBTC's contention that Fortuna is not qualified for corporate rehabilitation, Fortuna points out the lower courts have already determined that the Rehabilitation Plan is feasible, and that MBTC's objections to the same is akin to substituting the latter's judgment over that of the court, in derogation of Section 23, Rule 4 of the Interim Rules, reading to wit:

Sec. 23. Approval of the Rehabilitation Plan. - The court may approve a rehabilitation plan even over the opposition of creditors holding a majority of the total liabilities of the debtor if, in its judgment, the rehabilitation of the debtor is feasible and the opposition of the creditors is manifestly unreasonable.

In determining whether or not the opposition of the creditors is manifestly unreasonable, the court shall consider the following:

- a. That the plan would likely provide the objecting class of creditors with compensation greater than that which they would have received if the assets of the debtor were sold by a liquidator within a three-month period; x x x.

To this, MBTC reiterates in its Reply to the Comment of Fortuna that Section 1, Rule 4 is clear and unambiguous and not susceptible of the interpretation that even defaulting debtors such as Fortuna may file a Rehabilitation Petition. MBTC pleads its view that rehabilitation is intended to aid distressed but still viable corporations to the end that they may be able to get back to their feet again and resume operations.[26]

As a creditor, MBTC behooves this Court to overrule the CA as "the rationale behind corporate rehabilitation must be upheld at all times and must not be allowed to be abused and misused by corporations whose aim is solely to thwart the enforcement of legal rights by a creditor, and that the creditor must not be put into a situation where it would have to wait for a miracle to happen while watching the assets of the debtor slowly dissipating and losing their values." [27]

This Court takes notice that on September 24, 2018, MBTC filed a Compliance and Motion to Dismiss[28] with this Court, informing this Court that the rehabilitation proceedings have allegedly already been rendered moot by the following supervening events, to wit: First, that the rehabilitation proceedings in SEC Case No. S7-002-MN entitled "In Re: Corporate Rehabilitation Fortuna Paper Mills and Packaging Corporation" subject of the present petition, was already terminated by the RTC in its Order[29] dated November 21, 2011. Second, that the CA affirmed said order in a Decision[30] promulgated on August 30, 2013. Third, that Fortuna initially filed a motion for reconsideration to assail the CA's decision, but submitted a Motion to Withdraw[31] the same on February 18, 2014. Fourth, that the CA promulgated a Resolution[32] on April 30, 2014 granting the Motion to Withdraw, hence, that the Decision dated August 30, 2013 of the CA in CA-G.R. SP No. 124062, which affirmed the Order dated November 21, 2011 of the RTC in SEC Case No. S7-002-MN which declared the rehabilitation proceedings as deemed terminated.

To wit, the RTC's decision terminating the rehabilitation proceedings reads, to wit:

WHEREFORE, finding the proposed amended rehabilitation plan inadequate to convince the Court that petitioner can be rehabilitated and restored to its former position of successful operation, the motion to admit amended rehabilitation plan is DENIED.

For failure to implement the approved eight[-]year rehabilitation plan for four years, the motion to terminate rehabilitation proceedings is GRANTED.

The rehabilitation receiver's report for November 2011 is NOTED and he is directed to render his final accounting within a period of thirty days from notice.

This rehabilitation proceeding is forthwith deemed TERMINATED. Accordingly, the Stay Order issued in this case is LIFTED, and is now functus officio.

SO ORDERED.[33]

As a result of the foregoing, MBTC belatedly prays that this petition be dismissed in view of the supervening event ergo the termination of the rehabilitation proceedings, rendering the case moot and academic.

Ruling of the Court

In legal parlance, a case is considered moot when it ceases to present a justiciable controversy by virtue of supervening events, and as a rule, courts decline jurisdiction over such a case, or dismiss it on ground of mootness.[34]

The reasoning behind the dismissal of a case for being declared moot and academic is clear. Especially for pragmatic reasons, courts will not determine a moot question in a case in which no practical relief can be granted. It is deemed unnecessary to indulge in an academic discussion of a case presenting a moot question as a judgment thereon cannot have any practical legal effect or, in the nature of things, cannot be enforced.[35]

The RTC's Order dated November 21, 2011 terminating the rehabilitation proceedings effectively puts an end to the judicial controversy between the parties. Nonetheless, this Court still considers it necessary to touch on the question of whether or not a corporation in debt may qualify for corporate rehabilitation, Fortuna in this case, despite the finding of the lower court, belatedly brought to this Court's attention. Ruling on the merits despite a ruling of the lower court rendering the case moot and academic, is not novel. In *Rep. of the Phils. v. Manila Electric Co. (Meralco), et al.*, [36] despite the intervening rendition of the trial court's decision on the merits of the case therein, the Court considered it necessary to still deal with the contentions of the petitioner, in the interest of upholding the observations of the CA on the propriety of the actions of the trial court, which the Court reasoned would be instructive for the Bench and the practicing Bar.

This Court finds that the issues brought to fore go beyond the facts presented and delve into important questions of law, questions that will continue to crop up considering the importance and regularity of rehabilitation proceedings. As a matter of pragmatism, this Court notes that Fortuna has several creditors [37] aside from MBTC, and an adjudication on the substantial merits as presented in this petition will serve as a guide for the conduct of the rehabilitation proceedings, not only in terms of the validity of the rehabilitation proceeding itself, but even if Fortuna is in fact qualified to file for corporate rehabilitation in the first place.

Fortuna is qualified to file for corporate rehabilitation.

Rehabilitation refers to the restoration of the debtor to a condition of successful operation and solvency, if it is shown that its continuance of operation is economically feasible and its creditors can recover by way of the present value of payments projected in the plan, more if the debtor continues as a going concern than if it is immediately liquidated.[38]

Section 1, Rule 4 of the Interim Rules on the Procedure on Corporate Rehabilitation provides for the qualifications of a corporation to file a petition for corporate rehabilitation, to wit:

Sec. 1. Who May Petition. - Any debtor who foresees the impossibility of meeting its debts when they respectively fall due, or any creditor or creditors holding at least twenty-five percent (25%) of the debtor's total liabilities, may petition the proper Regional Trial Court to have the debtor placed under rehabilitation. (Emphasis Ours)

A plain reading of the provision shows that the Interim Rules does not make any distinction between a corporation which is already in debt and a corporation which foresees the possibility of debt, or which would eventually yet surely fall into the same, but may at present be free from any financial liability. Thus, since the statute is clear and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This is the plain meaning rule or *verba legis*, as expressed in the maxim *index animi sermo* or speech is the index of intention.[39]

In *Philippine Bank of Communications v. Basic Polyprinters and Packaging Corporation*,^[40] the Court underscored that despite the insolvency of a corporation, it cannot be hindered to file a petition for corporate rehabilitation. To conclude otherwise will defeat its purpose of restoring a corporation to its former position of successful operation and solvency.^[41]

Upon cursory reading of the report and recommendation of Atty. Teston, it can be seen that Fortuna maintains a status of solvency, having more assets than its liabilities with a Php 71,000,000.00 margin.^[42] However, even hypothetically granting that Fortuna is already in a state of insolvency, the Court finds that is not precluded from filing its Rehabilitation Petition to facilitate its restoration to its former business's stability. Fortuna is seeking a fresh start to lift itself from its present financial predicament. Thus, the foreseen viable rehabilitation of Fortuna would be more advantageous to the business community and its creditors rather than proceed with its liquidation which may possibly lead to its eventual corporate death.

This Court need not distinguish whether the claim has already matured or not. What is essential in case of rehabilitation is the inability of the debtor corporation to pay its dues as they fall due. In the case herein, accepting MBTC's proposition that debtor companies already in default are unqualified to file a petition for corporate rehabilitation not only contradicts the purpose of the law, as stated, but also advocates a limiting bar that is not found under the pertinent provisions. A better and more sound interpretation adheres to the very purpose of corporate rehabilitation, which is to allow the debtor-corporation to be restored "to a position of successful operation and solvency, if it is shown that its continuance of operation is economically feasible and its creditors can recover by way of the present value of payments projected in the plan."^[43]

Under the doctrine of *stare decisis*, it has already been held that a corporation in debt may petition for corporate rehabilitation.

Relevantly and crucially, the Court has already categorically ruled that a corporation with debts that have already matured may still file a petition for corporate rehabilitation under the Interim Rules. In *Metropolitan Bank and Trust Company v. Liberty Corrugated Boxes Manufacturing Corporation*,^[44] therein respondent Liberty Corrugated Boxes Manufacturing Corporation (Liberty), the sister company of Fortuna in the present case, filed its own petition for corporate rehabilitation which was subsequently approved, despite opposition from MBTC, likewise the petitioner herein. The petition for corporate rehabilitation in the Liberty case consisted of grounds similarly raised by Fortuna such as a debt moratorium, renewal or marketing efforts, resumption of operations and entry into condominium development.

Arriving at the same conclusion as in the trial court proceedings herein, the RTC found the petition to be sufficient in form and substance, and subsequently approved Liberty's rehabilitation plan as it found that Liberty was still capable of rehabilitation.^[45]

On subsequent appeal to the Court, MBTC argued that Liberty can no longer file a petition for corporate rehabilitation pursuant to Section 1 of Rule 4 of the Interim Rules since MBTC believed that the provision restricts the kind of debtor who could petition to only those "who foresees the impossibility of meeting its debts when the respectively fall due."^[46] Liberty, being already in default in its obligations, allegedly no longer fell within the ambit of the provision. Furthermore, MBTC asserted that the rehabilitation lacked the requisite material financial commitment required under Section 5 of Rule 4 of the Interim Rules.

Ruling favorably, the Court granted Liberty's petition concluding that a corporation may file for rehabilitation despite having defaulted on its obligations to the petitioners.^[47] The Court stated:

As stated by the CA in Philippine Bank of Communications, rehabilitation is in line with the State's objective to promote a wider and more meaningful equitable distribution of wealth.

In line with this objective, the Interim Rules provide for a liberal construction of its provisions:

RULE 2

Definition of Terms and Construction

x x x x

SECTION 2. Construction. - These Rules shall be liberally construed to carry out the objectives of Sections 5(d), 6(c) and 6(d) of Presidential Decree No. 902-A, as amended, and to assist the parties in obtaining a just, expeditious, and inexpensive determination of cases. Where applicable, the Rules of Court shall apply suppletorily to proceedings under these Rules.

x x x x

There is no reason why corporations with debts that may have already matured should not be given the opportunity to recover and pay their debtors in an orderly fashion. The opportunity to rehabilitate the affairs of an economic entity, regardless of the status of its debts, redounds to the benefit of its creditors, owners, and to the economy in general. Rehabilitation, rather than collection of debts from a company already near bankruptcy, is a better use of judicial rewards.

x x x x

Thus, the condition that triggers rehabilitation proceedings is not the maturation of a corporation's debts but the inability of the debtor to pay these.

Where the law does not distinguish, neither should this Court. Because the definition under the Interim Rules is encompassing, there should be no distinction whether a claim has matured or otherwise.

Petitioner's proposed interpretation contradicts provisions of the Interim Rules, which contemplate situations where a debtor corporation may already be in default. As correctly pointed out by respondent, a creditor may possibly petition for the debtor's rehabilitation for default on debts already owed.[48] (Citations omitted and emphasis and underscoring Ours)

Thus, considering the question of law whether or not a corporation already in debt may file a petition for rehabilitation, in the Liberty case, is identical to that posited by MBTC in the case herein, the Court is behooved to dismiss the petition as the doctrine of stare decisis finds full application. Time and again, the Court has held that it is a very desirable and necessary judicial practice that when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases in which the facts are substantially the same. Stare decisis et non quia movere. Stand by the decisions and disturb not what is settled.

As defined and discussed in Hon. Jonathan A. Dela Cruz and Hon. Gustavo S. Tambunting, as Members of the House of Representatives and as Taxpayers v. Hon. Paquito N. Ochoa Jr., in his Capacity as the Executive Secretary; Hon. Joseph Emilio A. Abaya, in his Capacity as the Secretary of the Department of Transportation and Communications; Hon. Florencio B. Abad, in his Capacity as the Secretary of the Department of Budget and Management; and Hon. Rosalia V. De Leon, in her Capacity as the National Treasurer:[49]

Stare decisis simply means that for the sake of certainty, a conclusion reached in one case should be applied to those that follow if the facts are substantially the same, even though the parties may be different. It proceeds from the first principle of justice that, absent any powerful countervailing considerations, like cases ought to be

decided alike. Thus, where the same questions relating to the same event have been put forward by the parties similarly situated as in a previous case litigated and decided by a competent court, the rule of stare decisis is a bar to any attempt to relitigate the same.”[50]

There is no compliance with the minimum requirements under Section 5 of Rule 4 of the Interim Rules

Despite this Court's finding that Fortuna may petition for court rehabilitation, being qualified to do does not mean that such a petition will automatically be validated.

While to delve into the material incidents of the Rehabilitation Plan would require a painstaking review of the sufficiency and weight of evidence presented by the parties, ergo, a review of the facts, this Court believes that exceptions under law are present to allow a closer look at the evidence on record. The Court as a general rule reviews questions of fact only if the petition shows any, some, or all of the following:

- a. The conclusion of the [CA] is grounded entirely on speculations, surmises and conjectures;
- b. The inference made is manifestly mistaken, absurd or impossible;
- c. There is a grave abuse of discretion;
- d. The judgment is based on misapprehension of facts;
- e. The findings of facts are conflicting;
- f. The [CA], in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee.
- g. The findings of fact of the [CA] are contrary to those of the trial court;
- h. The findings of fact are conclusions without citation of specific evidence on which they are based;
- i. The facts set forth in the petition, as well as in the petitioner's main and reply briefs, are not disputed by respondents; or
- j. The findings of fact of the [CA] are premised on the supposed absence of evidence and contradicted by the evidence on record.[51]

In this case, the Court finds that the lower courts based their findings on a misapprehension of facts, facts that would very clearly show that the lack of feasibility in the Rehabilitation Plan as well as the infirmities in the same. Due to this, this Court holds that the CA committed grave abuse of discretion that warrants the reversal of its decision on the apparent validity of the Rehabilitation Plan.

To note, the test[52] in evaluating the feasibility of the plan was laid down in *Bank of the Philippine Islands v. Sarahia Manor Hotel Corporation* (Bank of the Philippine Islands,[53] to wit:

In order to determine the feasibility of a proposed rehabilitation plan, it is imperative that a thorough examination and analysis of the distressed corporation's financial data must be conducted. If the results of such examination and analysis show that there is a real opportunity to rehabilitate the corporation in view of the assumptions made and financial goals stated in the proposed rehabilitation plan, then it may be said that a rehabilitation is feasible. In this accord, the rehabilitation court should not hesitate to allow the corporation to operate as an on-going concern, albeit under the terms and conditions stated in the approved rehabilitation plan. On the other hand, if the results of the financial examination and analysis clearly indicate that there lies

no reasonable probability that the distressed corporation could be revived and that liquidation would, in fact, better subserve the interests of its stakeholders, then it may be said that a rehabilitation would not be feasible. In such case, the rehabilitation court may convert the proceedings into one for liquidation.[54] (Emphasis Ours)

In the recent case of *Phil. Asset Growth Two, Inc., et al. v. Fastech Synergy Phils., Inc., et al.*,^[55] the Court took note of the characteristics of feasible rehabilitation plan as opposed to an infeasible rehabilitation plan, as follows:

Professor Stephanie V. Gomez of the University of the Philippines College of Law suggests specific characteristics of an economically feasible rehabilitation plan:

- a. The debtor has assets that can generate more cash if used in its daily operations than if sold.
- b. Liquidity issues can be addressed by a practicable business plan that will generate enough cash to sustain daily operations.
- c. The debtor has a definite source of financing for the proper and full implementation of a Rehabilitation Plan that is anchored on realistic assumptions and goals.

These requirements put emphasis on liquidity: the cash flow that the distressed corporation will obtain from rehabilitating its assets and operations. A corporation's assets may be more than its current liabilities, but some assets may be in the form of land or capital equipment, such as machinery or vessels. Rehabilitation sees to it that these assets generate more value if used efficiently rather than if liquidated.

On the other hand, this court enumerated the characteristics of a rehabilitation plan that is infeasible:

- a. the absence of a sound and workable business plan;
- b. baseless and unexplained assumptions, targets and goals;
- c. speculative capital infusion or complete lack thereof for the execution of the business plan;
- d. cash flow cannot sustain daily operations; and
- (e) negative net worth and the assets are near full depreciation or fully depreciated.^[56] (Citation omitted)

Taking all these points into consideration, among others, in the case of *Fortuna*, the Court disagrees with the finding of the lower courts that the Rehabilitation Plan is one that is economically feasible for several reasons.

First, the Rehabilitation Plan is primarily premised on speculative investments and the lack of material financial commitments. In *Fastech*, the Court stated that 'nothing short of legally binding investment commitment/s from third parties is required as a material financial commitment. To wit:

A material financial commitment becomes significant in gauging the resolve, determination, earnestness, and good faith of the distressed corporation in financing the proposed rehabilitation plan. This commitment may include the voluntary undertakings of the stockholders or the would-be investors of the debtor-corporation indicating their readiness, willingness, and ability to contribute funds or property to guarantee the continued successful operation of the debtor-corporation during the period of rehabilitation. x x x Case law holds that nothing short of legally binding investment commitment/s from third parties is required to qualify as a material financial commitment. x x x Here, no such binding investment was presented.^[57]

The following proposals and commitments as found in the Rehabilitation Plan show the lack of any legally binding investment:^[58]

- 30.a) PROGRAM I – Restart and Continuance of Business of *Fortuna* with Implementation of Specific Plans of Action – The general plan is to continue the operation of *Fortuna*. These will be implemented with the

following features:

(1) Entry of Investor for Fortuna. The of (sic) Policity (sic) Enterprises Ltd. of Hongkong has been identified in buying into Fortuna.

(2) Debt moratorium on principal and interest for two years and debt restructuring for a longer term or tenure and reduced interest rates. It is proposed that interest rates for a certain period within the rehabilitation period be reduced.

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With the relief from debt burdens and threats of paralyzing foreclosures by the foregoing modifications of its debt-structure, and also as part of its rehabilitation plan, FORTUNA shall implement the following key plans of action to bolster its businesses; detailed as follows:

c. The entry of new investor shall pump in at least Php 70,000.000 into the Company; a communication identifying this new investor is hereto attached as Appendix "B";

d. The cash infusion shall be used principally to: (i) convert the bunker-fired boiler to cheaper coal; (ii) purchase of raw materials; (hi) operation of machines at or near maximum capacities; and (iv) settlement of liabilities to Meralco to assure power supply.

30.b) PROGRAM II – Expansion to Other Businesses to Take Advantage of Best-Use of Realty Assets – The Business Plan for the Rehabilitation of FORTUNA has the general premise that the present business of the Petitioner will remain, and in fact, will be expanded, considering that it is still viable.

The plans for additional or supplementary new businesses are hereby adopted only to augment the old business and serve as a cushion in the event that there are adverse environmental and business conditions that are not foreseen. This is also being done to ensure that the settlement of all obligations will occur at the programmed period of eight years or even shorter.

This supplementary business consists of developing some of the realty assets of the Petitioner and/or its sister companies into love-rise (sic) or medium-rise residential condominium under the Pag-IBIG City Program of the Home Mutual Development Fund (Pag-IBIG). Under this Program, the Pag-IBIG shall purchase the completed residential units at 70% of its appraised value and constitute the developer as the marketing agent. This way, the payment to the contractor, who shall complete the building on a turn-key basis, is assured.[59]

It is clear from a perusal of the Rehabilitation Plan that the process is heavily, if not completely predicated on speculative business proposals as well as the contingent entry of the potential foreign investor, Polycity. It is emphasized that the entry of Polycity is wholly predicated on conditions imposed on Fortuna by the former, as seen in the letter of Polycity, which reads to wit:

Gentlemen:

We write to express our intention to acquire 50% or more of the issued capital stock of Fortuna Paper Mills & Packaging Corporation (Fortuna), which we understand is being sold. This letter serves notice to you being the sole financial creditor of Fortuna.

Our offer to purchase shall be subject to the following conditions: (i) grant of an exclusivity period of ninety (90) days during which period Fortuna shall not entertain any other offers from possible purchasers, but shall allow us to conduct due diligence and undertake other activities related to the possible acquisition of Fortuna's sticks; (ii) the conduct of financial, operational, legal and technical due diligence which yield satisfactory results to be completed within sixty (60) days of Fortuna's acceptance of this letter (iii) acceptable documentation of the acquisition; and (iv) Fortuna's compliance with any conditions precedent to such acquisition.

The Letter of Intent submitted to Fortuna does not constitute a binding a commitment on either party with respect to any transaction and is not intended to be and does not constitute a legal binding obligation. No legal binding obligations will be created, implied or inferred until and unless a definitive agreement is executed and delivered by the parties.

We will be sending over to Manila our representatives over in the immediate coming weeks to negotiate with the owners of Fortuna and to meet with the authorized representatives of Metropolitan Bank. We hope to introduce ourselves in person and to discuss other matters involving Fortuna.

Yours,

Anthony Sher[60]

The aforecited transaction is not the viable and realistic option that complies with the minimum requirements of the Interim Rules. Critically, to this date, there is also no showing on the part of Fortuna that the company was able to comply with the conditions that would result in Polycity investing in the former. In fact, Fortuna subsequently filed a Motion to Amend Rehabilitation Plan dated March 5, 2009[61] almost two (2) years after the filing of the Rehabilitation Plan, stating that the investment of Polycity did not push through, necessitating the entry of Fortuna in the real estate business, to wit:

That unfortunately, it is unable to come up with the payments in the first year of Rehabilitation, due to the following reasons:

- a. The Rehabilitation Plan requires the infusion of Php70 Million from investor POL[Y]CITY. The current financial crisis, however, has compelled the investor to review its investment programs in this part of the world.
- b. That it is now necessary to raise on its own the funds required to initiate the operations of the plant.

x x x x

The approved Plan calls for the entry of the Petitioner in real estate business. The first phase of thus business is the construction of a six-storey condominium at the 1.3 Hectare property of its sister company Classic Frames Inc. at Malabon, Metro Manila. This project is expected to result in a net profit of Php 277 Million.[62]

Even setting aside that the entry into real estate business is general and cannot constitute a surefire way to obtain assets to eventually pay of its creditors, Fortuna has failed to persuade, not only because on its surface the Rehabilitation Plan is riddled with potholes, but also because the facts of the case show that its initial attempts at currying investors have already failed, which has in fact been the basis for the 2011 decision of the RTC in terminating the rehabilitation proceedings. Fortuna was unable to show proof of feasibility turning into actuality as regards its proposal that would warrant the return of confidence that the continuation of Fortuna's corporate life and activities would achieve solvency, or a position where it would be able to pay its obligations as they fall due in the ordinary course of business. Even in its subsequent pleadings, Fortuna failed to show any positive development which would assuage any doubts.

Even Fortuna's mention of the joint-venture agreement with Oroquieta Properties, Inc. (OPI) in its Comment to the Petition[63] as a viable means for feasibility, is based on contingency and is far from a sure thing. While Fortuna alleges that it has already moved ahead of the realty development aspect of the Plan and that the architectural plans have already been prepared by OPI and submitted to the Home Development Mutual Fund for assessment, Fortuna itself admits that this is subject to the condition that OPI is willing to participate only as soon as the legal issues of rehabilitation is resolved.[64] It is clear that this substitute investment also has the taint of uncertainty that certainly deprives the Rehabilitation Plan of the requisite feasibility under the law, and thus, this

Court must rule as to its invalidity especially as holding otherwise would go against the purpose of corporate rehabilitation and the protection of creditors.

In *Viva Shipping Lines, Inc. v. Keppel Phils. Marine, Inc., et al.*,^[65] the Court emphasized the very definition and dictated purposes of corporate rehabilitation, as a remedy effected not just for the problematic corporation, but also for the creditors and other stakeholders:

Corporate rehabilitation is a type of proceeding available to a business that is insolvent. In general, insolvency proceedings provide for predictability that commercial obligations will be met despite business downturns. Stability in the economy results when there is assurance to the investing public that obligations will be reasonably paid. It is considered state policy to encourage debtors, both juridical and natural persons, and their creditors to collectively and realistically resolve and adjust competing claims and property rights[.] x x x [Rehabilitation or liquidation shall be made with a view to 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. x x x The rationale in corporate rehabilitation is to resuscitate businesses in financial distress because "assets x x x are often more valuable when so maintained than they would be when liquidated." Rehabilitation assumes that assets are still serviceable to meet the purposes of the business. The corporation receives assistance from the court and a disinterested rehabilitation receiver to balance the interest to recover and continue ordinary business, all the while attending to the interest of its creditors to be paid equitably. x x x.

x x x x

Philippine Bank of Communications v. Basic Polyprinters and Packaging Corporation reiterates that courts "must endeavor to balance the interests of all the parties that had a stake in the success of rehabilitating the debtors." These parties include the corporation seeking rehabilitation, its creditors, and the public in general. x x x Clearly then, there are instances when corporate rehabilitation can no longer be achieved. When rehabilitation will not result in a better present value recovery for the creditors, the more appropriate remedy is liquidation.

It does not make sense to hold, suspend, or continue to devalue outstanding credits of a business that has no chance of recovery. In such cases, the optimum economic welfare will be achieved if the corporation is allowed to wind up its affairs in an orderly manner. Liquidation allows the corporation to wind up its affairs and equitably distribute its assets among its creditors.^[66]

The rationale behind corporate rehabilitation must be upheld at all times and must not be allowed to be abused and misused by corporations whose aim is solely to thwart the enforcement of legal rights by a creditor, in this case, the Rehabilitation Plan which absolutely lacks feasibility and the lack of any abuse appurtenant to the provisions therein. Perhaps the best indicator that the Rehabilitation Plan was doomed to fail from the start was the very proclamation of the trial court declaring it as such and thus terminating the rehabilitation proceedings, a belated yet crucial development which rendered the issues in this case moot and academic.

WHEREFORE, the petition is DISMISSED for being moot and academic.

SO ORDERED.

Carpio, (Chairperson), and Caguioa, JJ., concur.

Perlas-Bernabe, J., see concurring opinion.

J. Reyes, Jr., J.,[*] on wellness leave.

[*] On wellness leave. Designated as Acting Member per Special Order No. 2587 dated August 28, 2018.

[1] Rollo, pp. 3-8.

[2] Penned by Associate Justice Arturo G. Tayag, with Associate Justices Noel G. Tijam (now a Member of this Court) and Normandie B. Pizarro concurring, *id.* at 39-66.

[3] *Id.* at 84.

[4] Rendered by Assisting Judge Leonardo L. Leonia; *id.* at 226-228.

[5] *Id.* at 13.

[6] *Id.*

[7] *Id.*

[8] *Id.* at 14.

[9] *Id.* at 14-15.

[10] *Id.* at 16.

[11] *Id.* at 45.

[12] *Id.* at 170-179.

[13] *Id.* at 45.

[14] *Id.* at 17.

[15] *Id.* at 215-216.

[16] *Id.* at 226-228.

[17] *Id.* at 227-228.

[18] *Id.* at 228.

[19] *Id.* at 56.

[20] *Id.* at 39-66.

[21] *Id.* at 66.

[22] *Id.* at 84.

[23] *Id.* at 22.

[24] *Id.* at 29-31.

[25] *Id.* at 245.

[26] *Id.* at 267.

[27] *Id.* at 267-268.

[28] *Id.* at 284-290.

[29] Rendered by Judge Celso R.L. Magsino, Jr.; *id.* at 291-296.

[30] Penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Stephen C. Cruz and Myra V.

Garcia-Fernandez concurring; id. at 299-321.

[31] Id. at 322-325.

[32] Id. at 327.

[33] id. at 13.

[34] Mendoza, et al. v. Mayor Villas, et al., 659 Phil. 409, 417 (2011).

[35] Lanuza, Jr. v. Yuchengco, 494 Phil. 125, 133 (2005).

[36] 723 Phil. 776 (2013).

[37] Rollo, p. 129.

[38] Republic Act No. 10142 or the Financial Rehabilitation and Insolvency Act of 2010, Section 4(gg).

[39] Amores v. House of Representatives Electoral Tribunal, et al., 636 Phil. 600, 610 (2010)

[40] 745 Phil. 651 (2014).

[41] Id. at 657.

[42] Rollo, p. 209.

[43] Republic Act No. 10142 or the Financial Rehabilitation and Insolvency Act of 2010, Section 4(gg).

[44] 804 Phil. 195 (2017).

[45] Id. at 201.

[46] Id. at 203.

[47] Id. at 207-208.

[48] Id. at 470-472.

[49] G.R. No. 219683, January 23, 2018.

[50] Id., citing Ty v. Banco Filipino Savings and Mortgage Bank, 689 Phil. 603, 614 (2012).

[51] Golden (Iloilo) Delta Sales Corp. v. Pre-Stress Int'l. Corp., et al., 596 Phil. 26, 39 (2009); Jarantilla v. Jarantilla, et al., 651 Phil. 13, 27 (2010).

[52] Phil. Asset Growth Two, Inc., et al. v. Fastech Synergy Phils., Inc., et al., 788 Phil. 355, 378 (2016).

[53] 715 Phil. 420 (2013).

[54] Id. at 378-379.

[55] 788 Phil. 355 (2016).

[56] Id. at 379-380.

[57] Id. at 375-377.

[58] Rollo, p. 92.

[59] Id. at 14-15.

[60] Id. at 104.

[61] Id. at 229-235.

[62] Id. at 230-233.

[63] Id. at 251.

[64] Id.

[65] 781 Phil. 95 (2016).

[66] Id. at 112-115.

CONCURRING OPINION

PERLAS-BERNABE, J.:

I concur. This petition assailing the Decision[1] dated July 7, 2009 of the Court of Appeals (CA) which upheld the Rehabilitation Plan of respondent Fortuna Paper Mill & Packaging Corporation (Fortuna) should be dismissed on the ground of mootness in view of the termination of the rehabilitation proceedings before the Court could resolve the instant petition. A case or issue is considered moot and academic when it ceases to present a justiciable controversy because of supervening events, rendering the adjudication of the case or the resolution of the issue without any practical use or value.[2]

This notwithstanding, the Court, in a number of instances,[3] discussed the substantive merits of the case otherwise moot and academic whenever it found the need to formulate controlling principles to guide the bench, the bar, and the public in view of the public interest involved.[4] In my view, and as the ponencia deemed fit, this case falls under the foregoing exception, considering the substantive issues raised concerning the technical subject of corporate rehabilitation and some of its working parameters.

As background, the basic facts of this case are as follows: on June 21, 2007, Fortuna filed a Petition[5] for corporate rehabilitation (rehabilitation petition) before the Regional Trial Court of Malabon, Branch 74 (RTC), with prayer for the issuance of a Stay Order, docketed as SEC. Case No. S7-002-MN. It alleged, among others, that eighty-eight percent (88%) of its total obligations is owing to petitioner Metropolitan Bank & Trust Company (MBTC)[6] which is secured by real estate and chattel mortgages over properties owned by it and its affiliates, and are now overdue.[7] It claimed that rehabilitation is the best option for the company, as well as its creditors because any forced liquidation would give the unsecured creditors a mere P0.51[8] for every peso of exposure.[9]

Under the proposed Rehabilitation Plan,[10] Fortuna intends to resume its operations which had ceased since the second quarter of 2006 due to the labor problems it encountered,[11] that was followed by the disconnection of its supply of electricity.[12] Essentially, the elements of the business plan are: (a) debt moratorium for two (2) years, restructuring of interest rates and waiver of penalty charges;[13] (b) the infusion of investment by Polycity Enterprises Ltd. (HK; Polycity) which had indicated its interest to acquire fifty percent (50%) or more of the company's stocks that is valued at least P70 Million;[14] and (c) entry into the business of condominium development on a 13,503 square meter-property owned by its sister company, Classic Frames Corp., located in Malabon, Metro Manila (Malabon property), which project shall be enrolled with the Pag-IBIG City Program backed with a Payment Guarantee Bond.[15]

Despite opposition, the rehabilitation petition was given due course, and the Rehabilitation Plan, which was found

to be feasible and viable, was eventually approved by the RTC in an Order[16] dated December 20, 2007. The said Order was subsequently affirmed by the CA in the assailed July 7, 2009 Decision.

Hence, the instant petition filed by MBTC, contending that: (a) Fortuna is not qualified to file a rehabilitation petition[17] under the 2000 Interim Rules of Procedure on Corporate Rehabilitation[18] (Interim Rules); and (b) there are no material financial commitments to support the Rehabilitation Plan.[19] Subsequently, however, MBTC informed the Court that the RTC had already terminated the rehabilitation proceedings in SEC. Case No. S7-002-MN,[20] which was affirmed by the CA.[21] Thus, based on this supervening event, MBTC prayed that the instant petition be dismissed on the ground of mootness.

As earlier mentioned, although this case had indeed become moot and academic due to the termination of the rehabilitation proceedings, it would be highly instructive to delve into the aforementioned substantive issues to guide the bench, the bar, and the public in understanding some of the working parameters attending corporate rehabilitation.

I.

FORTUNA IS QUALIFIED TO FILE FOR CORPORATE REHABILITATION.

As presently defined, "[r]ehabilitation shall refer to the restoration of the debtor to a condition of successful operation and solvency, if it is shown that its continuance of operation is economically feasible and its creditors can recover by way of the present value of payments projected in the plan, more if the debtor continues as a going concern than if it is immediately liquidated." [22] Under Section 1, [23] Rule 4 of the Interim Rules, any debtor who foresees the impossibility of meeting its debts when they respectively fall due may file a petition for corporate rehabilitation before the RTC. In this case, MBTC insists that Fortuna is not qualified to file a rehabilitation petition under the Interim Rules since the phrase "who foresees the impossibility of meeting its debts when they respectively fall due" must be construed to mean that an element of foresight is required, and that the debts of the corporation should not have matured. [24] It maintains that "[t]he unequivocal language of the [said] provision demonstrates a manifest intent on the part of its drafters to make a distinction between debtors already in default and those who are not, to the end that only debtors in the latter class may petition to be placed under rehabilitation." [25]

In *MBTC v. Liberty Corrugated Boxes Manufacturing Corporation* [26] (*Liberty*), wherein Fortuna's sister company was involved, the Court had already struck down MBTC's proposed interpretation as contradicting provisions of the Interim Rules, which contemplate situations where a debtor corporation may already be in default, [27] and defeats the clear purpose of the lawmakers. [28] The Court declared that a corporation with debts that have already matured may still file a petition for corporate rehabilitation under the Interim Rules because: (a) the condition that triggers rehabilitation proceedings is not the maturation of a corporation's debts but the inability of the debtor to pay these; and (b) the definition under the Interim Rules is encompassing; hence, there should be no distinction whether a claim has matured or otherwise. [29]

II.

THE REHABILITATION PLAN IS NOT SUPPORTED BY THE REQUIRED MATERIAL FINANCIAL COMMITMENTS, AS WELL AS A PROPER LIQUIDATION ANALYSIS, AND CONSEQUENTLY, IS NOT FEASIBLE.

Under Section 5, [30] Rule 4 of the Interim Rules, the rehabilitation plan shall include the material financial commitments supporting the same. In this case, MBTC faults the CA for relying on the highly contingent and

speculative proposal given by Polycity – the alleged White Knight investor – prior to the latter's conduct of due diligence on Fortuna and while funding negotiations were still placed on hold. It pointed out that while the rehabilitation receiver concluded that the said proposal was a distinct possibility, his recommendation in favor of Fortuna's rehabilitation was precisely conditioned on the completion of such due diligence by Polycity and the corresponding cash infusion within nine (9) months from approval of the rehabilitation plan.[31]

In *BPI Family Savings Bank, Inc. v. St. Michael Medical Center, Inc.*,^[32] the Court explained that "nothing short of legally binding investment commitment/s from third parties is required to qualify as a material financial commitment."^[33] However, no such binding investment was presented by Fortuna in this case. Clearly, Polycity only presented an offer to purchase that is contingent upon, among others, "the conduct of financial, operational, legal[,] and technical due diligence which yield satisfactory results to be completed within sixty (60) days of Fortuna's acceptance of [its] letter."^[34] Significantly, Polycity's Letter of Intent^[35] expressly states that: (a) the same "does not constitute a binding commitment on either party with respect to any transaction and is not intended to be and does not constitute a legal binding obligation;" and (b) "[n]o legal binding obligations will be created, implied or inferred until and unless a definitive agreement is executed and delivered by the parties."^[36] While Polycity's then President, Anthony Sher,^[37] informally affirmed his company's readiness to make the capital infusion subject to the resolution of the legal issues surrounding Fortuna's rehabilitation,^[38] the same was made at a time when it has not yet completed its due diligence on Fortuna,^[39] and has yet to ascertain satisfactory results that would convince it to invest. This hardly fits the description of a material financial commitment which would inspire confidence that the rehabilitation would turn out to be successful. Tellingly, even prior to the filing of the instant petition before the Court, Fortuna filed a Motion to Amend Rehabilitation Plan^[40] dated March 5, 2009 acknowledging that it was unable to come up with the scheduled payments in the first year of rehabilitation, on the ground, among others, that Polycity had not pushed through with its planned investment, leaving it with the necessity to raise its own funds,^[41] but without indicating how it shall proceed therewith. It is worthy to emphasize that while there is no absolute certainty in rehabilitation, the sacrifice that the creditors are compelled to make can only be considered justified if the restoration of the corporation's former state of solvency is feasible due to a sound business plan with an assured funding,^[42] which is lacking in this case.

Neither can Fortuna's projected entry into the realty business be considered as an acceptable material financial commitment. This is because no formal agreement was shown to have been forged between it and its alleged joint venture partner, Oroquieta Properties, Inc. (Oroquieta). Similar to Polycity, Oroquieta only provided a proposal to develop Fortuna's properties, which was likewise still subject to the conduct of due diligence and the further execution of a formal Memorandum of Agreement "after the rehabilitation court has given its approval"^[43] of Fortuna's petition. In any event, capital infusion from this source is speculative at best, as there is no reasonable expectation that the Projects would be completed within the assumed target dates for completion in order to realize any income therefrom. As aptly pointed out by MBTC, Pag-IBIG's "guarantee lies only on the sale of the completed units but not on the means of sustaining the funds needed to complete the Project."^[44]

But this is not all. In addition, Fortuna's rehabilitation petition lacks a proper liquidation analysis that would guide the Court in ascertaining if Fortuna's creditors can recover by way of the present value of payments projected in the plan, more if it continues as a going concern than if it is immediately liquidated, which is a crucial factor in a corporate rehabilitation case.^[45] The Interim Rules state that the rehabilitation plan shall include "a liquidation analysis that estimates the proportion of the claims that the creditors and shareholders would receive if the debtor's properties were liquidated."^[46] However, while a liquidation analysis^[47] was attached to the rehabilitation petition, the same was not accompanied by any explanation or reliable market information to back the assumptions^[48] made by Fortuna's management as to the recoverable amount of its assets, and thus, preventing the Court from determining the feasibility of the plan.

The failure of the Rehabilitation Plan to state any material financial commitment to support rehabilitation, as well as to include a proper liquidation analysis, renders the CA's considerations for approving the same[49] as actually unsubstantiated, and hence, insufficient to decree Fortuna's rehabilitation. It bears to stress that the remedy of rehabilitation should be denied to corporations that do not qualify under the Interim Rules. Neither should it be allowed to corporations whose sole purpose is to delay the enforcement of any of the rights of the creditors.[50]

At any rate, the financial documents presented by Fortuna clearly fail to demonstrate the feasibility of its proposed Rehabilitation Plan. In this case, the interim financial statements (FS) as of May 31, 2007 show that: (a) while Fortuna has substantial total assets, a large portion thereof is comprised of Property and Equipment,[51] the bulk of which are mortgaged to MBTC;[52] (b) Fortuna's cash operating position[53] was insufficient to meet its maturing obligations as its current assets were substantially lower than its current liabilities;[54] and (c) when compared vis-a-vis Fortuna's audited FS[55] for the three (3) immediately preceding years, certain accounts were omitted[56] or added[57] without any explanation or justification. Moreover, no basis was provided for the projected sales,[58] expenses, and net incomes for the ten (10)-year period[59] following the filing of the rehabilitation petition, such as forecasts of independent industry analysts, and Fortuna's performance in previous years[60] does not indicate that its sales grow annually at such rate.

Verily, Fortuna's rehabilitation plan should have shown that it has enough serviceable assets to be able to continue its business operation. In fact, opposed to this objective, the rehabilitation plan still requires: (a) the acquisition of a "coal-fired boiler for an estimated P15,000,000.00"[61] to replace the bunker-fired boiler[62] in order "to reduce its production costs and be competitive with its rivals;"[63] and (b) the settlement of the liabilities to Manila Electric Company[64] and its suppliers "essential for resumption of operations"[65] – that would further sacrifice its cash flow. Without a definite source of financing, both internally and externally, or enough cash and other current assets to enable it to resume operations, it is difficult to perceive the feasibility of rehabilitating Fortuna's business.

The purpose of rehabilitation proceedings is not only to enable the company to gain a new lease on life but also to allow creditors to be paid their claims from its earnings, when so rehabilitated. Therefore, the remedy of rehabilitation should be denied to corporations whose insolvency appears to be irreversible and whose sole purpose is to delay the enforcement of any of the rights of the creditors, which is rendered obvious by: (a) the absence of a sound and workable business plan; (b) baseless and unexplained assumptions, targets and goals; and (c) speculative capital infusion or complete lack thereof for the execution of the business plan,[66] as in this case.

Thus, Fortuna's rehabilitation petition should have been dismissed not only due to its failure to comply with the key requirements under the Interim Rules – i.e., to state any material financial commitment to support the rehabilitation, as well as to include a proper liquidation analysis – but also to establish the feasibility and viability of the Rehabilitation Plan. However, since the rehabilitation proceedings had already been terminated, the foregoing observations are purely academic as this case has already been mooted and therefore, must be dismissed.

ACCORDINGLY, I vote to DISMISS the petition on the ground of mootness.

[1] Rollo, pp. 39-66. Penned by Associate Justice Arturo G. Tayag with Associate Justices Noel G. Tijam (now a Member of this Court) and Normandie B. Pizarro, concurring.

[2] See *Ayala Land, Inc. v. Heirs of Lactao*, G.R. No. 208213, August 8, 2018.

[3] See *Mahinay v. Gako, Jr.*, 677 Phil. 292 (2011); *Republic v. Manila Electric Company*, 723 Phil. 776 (2013).

- [4] See *Genuino v. De Lima*, G.R. Nos. 197930, 199034 & 199046, April 17, 2018.
- [5] *Rollo*, pp. 85-97.
- [6] See *id.* at 92.
- [7] See *id.* at 90-91.
- [8] Should be P0.54. See *Liquidation Analysis*; *CA rollo*, p. 212.
- [9] *Rollo*, p. 95.
- [10] *CA rollo*, pp. 109-141.
- [11] See *id.* at 123.
- [12] See *rollo*, p. 13.
- [13] See *CA rollo*, p. 131-132.
- [14] See *id.* at 134. See also Polycity's letter of intent dated March 14, 2007; *rollo*, p. 104.
- [15] See *CA rollo*, pp. 135-136.
- [16] See *rollo*, pp. 226-228. Penned by Assisting Judge Leonardo L. Leonida.
- [17] See *rollo*, pp. 21-23.
- [18] A.M. No. 00-8-10-SC, November 21, 2000 (Re: Interim Rules of Procedure on Corporate Rehabilitation).
- [19] See *rollo*, pp. 29-31.
- [20] In its Decision dated November 21, 2011.
- [21] The CA denied Fortuna's Rule 43 petition in its Decision dated August 30, 2013 in CA-G.R. SP No. 124062. Penned by Associate Justice Vicente S.E. Veloso with Associate Justices Stephen C. Cruz and Myra V. Garcia-Fernandez, concurring.
- Fortuna moved for reconsideration, but subsequently withdrew the motion on the ground that the petition has been overtaken by unspecified events which rendered the petition moot and academic, and admitting the correctness and validity of the November 21, 2011 RTC Order terminating the rehabilitation proceedings.
- In a Resolution dated April 30, 2014, the CA granted Fortuna's motion to withdraw.
- [22] See Section 4 (gg) of Republic Act No. 10142, entitled "AN ACT PROVIDING FOR THE REHABILITATION OR LIQUIDATION OF FINANCIALLY DISTRESSED ENTERPRISES AND INDIVIDUALS," OTHERWISE KNOWN AS THE "FINANCIAL REHABILITATION AND INSOLVENCY ACT (FRIA) of 2010" (July 18, 2010).
- [23] Section 1. Who May Petition. – Any debtor who foresees the impossibility of meeting its debts when they respectively fall due, or any creditor or creditors holding at least twenty-five percent (25%) of the debtor's total liabilities, may petition the proper Regional Trial Court to have the debtor placed under rehabilitation.
- [24] See *rollo*, p. 21.
- [25] See *id.* at 22-23.
- [26] G.R. No. 184317, January 25, 2017, 815 SCRA 458.

[27] See *id.* at 472.

[28] See *id.* at 479.

[29] See *id.* at 471-472.

[30] Section 5. Rehabilitation Plan. – The rehabilitation plan shall include (a) the desired business targets or goals and the duration and coverage of the rehabilitation; (b) the terms and conditions of such rehabilitation which shall include the manner of its implementation, giving due regard to the interests of secured creditors; (c) the material financial commitments to support the rehabilitation plan; (d) the means for the execution of the rehabilitation plan, which may include conversion of the debts or any portion thereof to equity, restructuring of the debts, dacion en pago, or sale of assets or of the controlling interest; (e) a liquidation analysis that estimates the proportion of the claims that the creditors and shareholders would receive if the debtor's properties were liquidated; and (f) such other relevant information to enable a reasonable investor to make an informed decision on the feasibility of the rehabilitation plan. (Emphases supplied)

[31] See *rollo*, pp. 26-27.

[32] 757 Phil. 251, 266 (2015).

[33] *Id.* at 268.

[34] *Rollo*, p. 104; underscoring supplied.

[35] *Id.*

[36] See *id.*

[37] See *id.*

[38] During an interview with the rehabilitation receiver; see *id.* at 212.

[39] See *id.* at 215.

[40] *Id.* at 229-236.

[41] See *id.* at 230.

[42] See *Wonder Book Corp. v. Phil. Bank of Communications*, 691 Phil. 83, 100 (2012).

[43] See *rollo*, pp. 219-220.

[44] See MBTC's Reply (Re: Comment dated 28 May 2010) dated September 20, 2010; *id.* at 266.

[45] See *BPI Family Savings Bank, Inc. v. St. Michael Medical Center, Inc.*, *supra* note 32, at 269.

[46] See Section 5, Rule 4 of the Interim Rules.

[47] CA *rollo*, p. 212.

[48] Among the assumptions made was the inclusion of the account "Estimated receivable" from Liberty on the realizable value of its land pledged in the amount of P84,414,200.00 (see CA *rollo*, p. 212) in the computation of free/available assets. However, the records are bereft of showing that Liberty, which is also undergoing rehabilitation, had already sold or assigned the said land to Fortuna.

[49] I.e., (a) Fortuna's assets, which are well in excess of its liabilities, would be even more valuable if Fortuna is preserved as a going concern rather than if it were liquidated outright (see *rollo*, p. 57); (b) Polycity's investment

is a viable and realistic option (see *id.* at 58), and the approval of Fortuna's rehabilitation plan, as well as the lower court's close oversight of its implementation through the receiver "could well expedite the entry of Polycity" (see *id.* at 61); and (c) the proposed business of condominium development is a viable venture for the debtor and a good source of cash flow for its operations (see *id.* at 63).

[50] *Philippine Asset Growth Two, Inc. v. Fastech Synergy Philippines, Inc.*, 788 Phil. 355, 378 (2016).

[51] See *rollo*, p. 125.

[52] Comprising the following:

Buildings

P 131,521,000.00

Machineries/Chattel

144,643,000.00

Land

36,772.000.00

Total assets mortgaged

P 312,936,000.00 (see *id.* at 90-91)

Total Porperty & Equipment (PPE)

÷ 409,349,354.62 (see *id.* at 125)

Percentage of mortgaged properties in the PPE

76.45%

=====

[53] "A company's cash position refers specifically to its level of cash compared to its pending expenses and liabilities, x x x. In general, a stable cash position means the company can easily meet its current liabilities with the cash or liquid assets it has on hand. Current liabilities are debts with payments due within the next 12 months." (See footnote 54 in *BPI Family Savings Bank, Inc. v. St. Michael Medical Center, Inc.*, *supra* note 32, at 269, citing Kokemuller, "Neil, "Cash Flow vs. Cash Position," *Chron.* <<http://smallbusiness.chron.com/cash-flow-vs-cash-position-51149.html>> [visited November 5, 2018])

[54] Fortuna's current assets and current liabilities as of May 31, 2007 are as follows:

Total Current Assets

P 3,605,395.50

Total Current Liabilities

14,896,762.24 (see *rollo*, p. 125)

[55] The audited financial statements atfached to the *rollo* and the CA *rollo* were not accompanied by any explanatory notes.

[56] The account "Finished Goods Inventory" which was valued at P50,316,867.49 in the audited Balance Sheet

as of December 31, 2006 (see rollo, p. 121) does not appear in the Interim Statement of Cost of Goods Manufactured and Sold (see id. at 127) and the Current Assets section of the Interim Balance Sheet (see id. at 125) without a showing that the same was sold and converted to cash or receivables, or otherwise disposed through a dacion en pago. Neither was it shown why the beginning balance of the "Raw Materials Inventory" in the Interim Statement of Cost of Goods Manufactured and Sold was reduced to P6,500,700.50 (see id. at 127) when the same was valued at P50,780,900.50 (see id. at 121) in the audited Balance Sheet as of December 31, 2006.

[57] The account "Utilities Payable" in the amount of P30,354,849.60 corresponding to the liability to MERALCO was suddenly reported in the Interim Balance Sheet (see id. at 125) when the same was never reflected in Fortuna's audited balance sheets for the years 2005 (see id. at 115) and 2006 (see id. at 122), despite the compromise agreement entered with MERALCO on July 2005 (see id. at 88).

[58]

Year 2 Sales

P 379,848,960.00

Year 1 Sales

323,872,960.00 (see CA rollo, p. 135)

Increase in Sales

P 55,976,000.00

÷ 379,848,960.00

0.1474

x 100%

Sales growth percentage

14.74%

=====

[59] See id.

[60] Considering the growth of 3.35% in sales from 2004 to 2005 computed as follows:

2005 Sales

P 92,842,658.02 (see rollo, p. 113)

2004 Sales

- 89,730,395.13 (see id. at 107)

Increase in Sales

P 3,112,262.89

÷ 92,842.658.02

0.0335

x 100%

Sales growth percentage

3.35%

=====

[61] See CA rollo, p. 134.

[62] See id. at 120.

[63] See id. at 134.

[64] Amounting to P30,354,849.60; see id. at 101.

[65] See id. at 134.

[66] See *Philippine Asset Growth Two, Inc. v. Fastech Synergy Philippines, Inc.*, supra note 50, at 383-384.

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