

****Title:**** Cemco Holdings, Inc. vs. National Life Insurance Company of the Philippines, Inc.

****Facts:****

1. ****Background of Entities Involved:****

- ***Union Cement Corporation (UCC)*:** A publicly-listed company.
- ***Union Cement Holdings Corporation (UCHC)*:** A non-listed company holding 60.51% of UCC's shares.
- ***Petitioner Cemco Holdings, Inc. (Cemco)*:** Owned 17.03% of UCC and 9% of UCHC.
- ***Bacnotan Consolidated Industries, Inc. (BCI)*** and ***Atlas Cement Corporation (ACC)*:** Owned 21.31% and 29.69% of UCHC shares, respectively.

2. ****Initial Transaction:****

- On July 5, 2004, BCI and ACC informed the Philippine Stock Exchange (PSE) of their decision to sell their UCHC shares to Cemco.

3. ****Disclosure to PSE:****

- As per PSE Circular for Brokers No. 3146-2004 dated July 8, 2004, this transaction increased Cemco's ownership to a total of 53% direct and beneficial ownership in UCC.

4. ****Initial Regulatory Inquiries:****

- The PSE queried the Securities and Exchange Commission (SEC) on July 15, 2004, whether the tender offer rule applied to this transaction.
- The SEC's Corporate Finance Department Director Justina Callangan initially opined on July 16, 2004, that the tender offer rule did not apply but required SEC en banc confirmation.

5. ****SEC En Banc Decision:****

- On July 27, 2004, SEC en banc confirmed that the tender offer rule did not apply to the transaction.

6. ****Demand Letter by Respondent:****

- On July 28, 2004, the respondent, National Life Insurance Company of the Philippines, Inc., demanded that Cemco comply with the mandatory tender offer rule, which Cemco refused.

7. ****Share Purchase Agreement:****

- On August 5, 2004, ACC and BCI formally entered into a Share Purchase Agreement with

Cemco, finalizing the transaction by August 12, 2004.

8. **Respondent's Complaint:**

- On August 19, 2004, respondent filed a complaint with the SEC to reverse its July 27 decision, declare the purchase void, and enforce the mandatory tender offer rule.
- In their defense, implicated parties (Cemco, UCC, UCHC, BCI, and ACC) argued that the tender offer rule only covered direct acquisition of the listed shares.

9. **SEC Reversal:**

- On February 14, 2005, the SEC reversed its prior resolution, directing Cemco to make a tender offer for UCC shares.

10. **Court of Appeals Proceedings:**

- Cemco challenged the SEC's decision, questioning SEC's jurisdiction and the applicability of the tender offer rule. The CA affirmed the SEC's decision, ruling that the tender offer rule applied and that SEC had jurisdiction.

11. **Further Appeals:**

- Cemco's subsequent motion for reconsideration with the CA was denied.

Issues:

1. **Jurisdiction of the SEC:**

- Does the SEC have jurisdiction to adjudicate the dispute and command Cemco to make a tender offer?

2. **Applicability of the Tender Offer Rule:**

- Does the mandatory tender offer rule apply to indirect acquisitions of shares in a listed company?

3. **Retroactive Application of SEC's Rule Interpretation:**

- Can the SEC's new interpretation of the tender offer rule be applied retroactively to Cemco's purchase of UCHC shares?

4. **Completeness and Effectivity of the SEC Decision:**

- Is the SEC decision valid, complete, and effective?

Court's Decision:

1. **Jurisdiction of the SEC:**

- The Supreme Court held that the SEC has the authority to adjudicate complaints and enforce obligations under the Securities Regulation Code. The adjudicative powers are implied from the SEC's express regulatory powers. Cemco is estopped from questioning jurisdiction as it participated in all SEC proceedings.

2. **Applicability of the Tender Offer Rule:**

- The Supreme Court affirmed that the mandatory tender offer rule applies to both direct and indirect acquisitions of shares aimed at protecting minority shareholders. This interpretation is in line with legislative intent to regulate control transactions of listed companies.

3. **Retroactive Application of SEC's Rule Interpretation:**

- The Court upheld that the SEC's advisory opinion could not bind the rights of the parties as it was not a final ruling. The subsequent SEC decision, reflecting the correct statutory interpretation, rightly applied to Cemco's purchase, ensuring protection for minority shareholders.

4. **Completeness and Effectivity of the SEC Decision:**

- The SEC decision is complete and mandates a tender offer procedure, consistent with the rules of the Securities Regulation Code.

Doctrine:

1. **SEC Adjudicative Power:**

- The SEC holds general adjudicative power necessary for implementing securities regulations, which includes resolving disputes and enforcing remedies aligned with regulatory functions under the Securities Regulation Code.

2. **Mandatory Tender Offer Rule:**

- The rule under Section 19 of the Securities Regulation Code applies not only to direct acquisitions but also to any transaction leading to control, encompassing indirect acquisitions ensuring protection for minority shareholders.

3. **Prospective Application:**

- New Securities Regulation Code interpretations must apply to current cases to maintain fairness and uphold the regulatory standard for all similar future transactions.

****Class Notes:****

1. ****SEC Jurisdiction:****

- SEC possesses regulatory and adjudicative functions under Section 5.1 of the Securities Regulation Code, including enforcing compliance and imposing sanctions.

2. ****Mandatory Tender Offer:****

- Pertinent under Section 19 of the Securities Regulation Code and Rule 19 of its Implementing Rules, applicable to acquisitions leading to 15% ownership or any acquisition resulting in control above 51%.

3. ****Estoppel in Jurisdiction Challenges:****

- Participation in a proceeding without challenging jurisdiction initially can bar later objections.

****Historical Background:****

- The case underlines evolving securities regulation practices in the Philippines, emerging to ensure minority shareholder protection during control acquisitions, reflecting global corporate governance trends focusing on fairness and transparency in securities transactions.