

## SECOND DIVISION

**[ G.R. No. 199028, November 19, 2014 ]**

**COSMOS BOTTLING CORPORATION, PETITIONER, VS.  
COMMISSION EN BANC OF THE SECURITIES AND EXCHANGE  
COMMISSION (SEC) AND JUSTINA F. CALLANGAN, IN HER  
CAPACITY AS DIRECTOR OF THE CORPORATION FINANCE  
DEPARTMENT OF THE SEC, RESPONDENTS.**

### D E C I S I O N

**DEL CASTILLO, J.:**

Assailed in this petition for review on *certiorari*<sup>[1]</sup> are the Decision<sup>[2]</sup> dated April 25, 2011 and the Resolution<sup>[3]</sup> dated October 17, 2011 of the Court of Appeals (CA) in CA-G.R. SP. No. 110714 affirming the Decision<sup>[4]</sup> dated September 10, 2009 of respondent the Securities and Exchange Commission (SEC) *En Banc* in SEC *En Banc* Case No. 04-08-129 which dismissed petitioner Cosmos Bottling Corporation's (Cosmos) appeal on the ground that it was treated as a prohibited motion for reconsideration. Thus, the Order of Revocation<sup>[5]</sup> (Revocation Order) dated March 19, 2008 of the SEC-Corporation Finance Department (SEC-CFD) revoking Cosmos's Registration of Securities/Permit to Sell Securities to the Public (Subject Registration/Permit) was deemed to have lapsed into finality.

#### The Facts

The instant case stemmed from Cosmos's failure to submit its 2005 Annual Report to the SEC within the prescribed period. In connection therewith, it requested an extension of time within which to file the same.<sup>[6]</sup> In response, the SEC-CFD, through respondent Director Justina F. Callangan (Director Callangan), sent Cosmos a letter<sup>[7]</sup> dated May 18, 2006 denying the latter's request and directing it to submit its 2005 Annual Report. The same letter also ordered Cosmos to show cause why the Subject Registration/Permit should not be revoked for violating Section 17.1(a)<sup>[8]</sup> of Republic Act No. 8799, otherwise known as "The Securities Regulation Code" (SRC).<sup>[9]</sup>

On May 31, 2006, Cosmos sent a reply-letter<sup>[10]</sup> to the SEC-CFD, explaining that its failure to file its 2005 Annual Report was due to the non-completion by its external auditors of their audit procedures. For this reason, Cosmos implored the SEC-CFD to reconsider its previous denial of Cosmos's request for additional time to file its 2005 Annual Report.<sup>[11]</sup> Thereafter, hearings for the suspension of the Subject Registration/Permit commenced, with Cosmos advancing the same reasons for the non-submission of its 2005 Annual Report in its May 31, 2006 letter to the SEC-CFD.<sup>[12]</sup>

## **The SEC-CFD Proceedings**

In an Order<sup>[13]</sup> dated May 8, 2007, the SEC-CFD ordered the suspension of the Subject Registration/Permit(suspension order)for a period of 60 days from receipt of the same, or until Cosmos files its 2005 Annual Report, whichever is earlier. The SEC-CFD also stated that Cosmos's failure to submit its 2005 Annual Report within the 60-day period shall constrain the SEC to initiate proceedings for revocation of the Subject Registration/Permit.<sup>[14]</sup>

After the lapse of the aforesaid period, Cosmos still failed to comply with the SEC's directives. Thus, the revocation proceedings commenced on August 22, 2007.<sup>[15]</sup> On August 24, 2007, Cosmos submitted its formal explanation,<sup>[16]</sup> reiterating that the delay in submitting its 2005 Annual Report, as well as its 2006 Annual Report, is occasioned by the following factors: (a) non-completion of its 2005 Audited Financial Statements by its external auditor; (b) the adoption of new accounting standards which gave rise to additional disclosures in the financial reports; and (c) the sale of Coca-Cola Bottlers Philippines, Inc., which is the parent company of Cosmos, to Coca-Cola South Asia Holdings, Inc.<sup>[17]</sup> These notwithstanding, Cosmos undertook to submit its 2005 and 2006 Annual Reports not later than October 31, 2007, or as soon as they are duly accomplished, and to pay all the corresponding penalties. Lastly, Cosmos also requested the SEC-CFD to abandon the pending revocation proceedings.<sup>[18]</sup>

On October 31, 2007, Cosmos finally submitted its 2005 and 2006 Annual Reports to the SEC.<sup>[19]</sup> In connection therewith, Cosmos sent a letter<sup>[20]</sup> dated January 24, 2008 to the SEC-CFD, requesting that the latter lift the suspension order and abandon the revocation proceedings against the former. <sup>[21]</sup> The SEC-CFD referred the matter to the SEC *En Banc* for its consideration in its March 13, 2008 meeting. <sup>[22]</sup> After the said meeting, the SEC *En Banc* issued Resolution No. 87, series of (s.) 2008<sup>[23]</sup> wherein they resolved to: (a) deny Cosmos's request for the lifting of the suspension order; and (b) revoke the Subject Registration/Permit.<sup>[24]</sup> On the basis thereof, the SEC-CFD issued a Revocation Order echoing the pronouncements indicated in the aforesaid resolution.

Dissatisfied, Cosmos appealed to the SEC *En Banc*.<sup>[25]</sup>

## **The SEC *En Banc* Ruling**

In a Decision<sup>[26]</sup> dated September 10, 2009, the SEC *En Banc* dismissed Cosmos's appeal.<sup>[27]</sup> It held that the Revocation Order was a mere articulation of the SEC *En Banc*'s Resolution No. 87, s. 2008, and thus, should be considered an issuance of the SEC *En Banc* itself. The SEC *En Banc* thus deemed Cosmos's appeal as a motion for reconsideration, a prohibited pleading under Section 3-6, Rule III of the 2006 SEC Rules of Procedure,<sup>[28]</sup> and was accordingly expunged from the records of the case.<sup>[29]</sup>

Aggrieved, Cosmos filed a petition for review before the CA.<sup>[30]</sup>

## The CA Ruling

In a Decision<sup>[31]</sup> dated April 25, 2011, the CA affirmed the SEC *En Banc* Ruling. It held that the SEC-CFD merely acted as an arm of the SEC *En Banc* when it issued the Revocation Order against Cosmos, considering that it was simply a reiteration of Resolution No. 87, s. 2008 which emanated from the SEC *En Banc* itself. As such, Cosmos's appeal before the SEC *En Banc* assailing the Revocation Order was properly deemed as a motion for reconsideration, since it is tantamount to a request for the SEC *En Banc* to review or reconsider its own judgment.<sup>[32]</sup> Hence, the SEC *En Banc* correctly dismissed Cosmos's appeal.

Further, the CA held that Cosmos's appeal, which was treated as a prohibited motion for reconsideration under the 2006 SEC Rules of Procedure, did not toll the reglementary period for filing an appeal before it. As such, the SEC *En Banc*'s Ruling, as well as the Revocation Order, had already lapsed into finality and could no longer be disturbed.<sup>[33]</sup>

Cosmos moved for reconsideration,<sup>[34]</sup> which was, however, denied in a Resolution<sup>[35]</sup> dated October 17, 2011, hence, this petition.

## The Issue Before the Court

The primordial issue for the Court's resolution is whether or not the CA correctly treated Cosmos's appeal before the SEC *En Banc* as a motion for reconsideration, and consequently, affirmed its dismissal for being a prohibited pleading under the 2006 SEC Rules of Procedure.

## The Court's Ruling

The petition is meritorious.

As an administrative agency with both regulatory and adjudicatory functions,<sup>[36]</sup> the SEC was given the authority to delegate some of its functions to, *inter alia*, its various operating departments, such as the SEC-CFD, the Enforcement and Investor Protection Department, and the Company Registration and Monitoring Department, pursuant to Section 4.6 of the SRC, to wit:

SEC. 4. *Administrative Agency.*

x x x x

4.6. The **Commission may, for purposes of efficiency, delegate any of its functions to any department** or office of the Commission, an individual Commissioner or staff member of the Commission except its review or appellate authority and its power to adopt, alter and supplement any rule or regulation.

The Commission may review upon its own initiative or upon the petition of any interested party any action of any