

SECOND DIVISION

[G.R. No. 165571, January 20, 2009]

**PHILIPPINE NATIONAL BANK AND EQUITABLE PCI BANK,
PETITIONERS, VS. HONORABLE COURT OF APPEALS,
SECURITIES AND EXCHANGE COMMISSION EN BANC, ASB
HOLDINGS, INC., ASB REALTY CORPORATION, ASB
DEVELOPMENT CORPORATION (FORMERLY TIFFANY TOWER
REALTY CORPORATION), ASB LAND INC., ASB FINANCE, INC.,
MAKATI HOPE CHRISTIAN SCHOOL, INC., BEL-AIR HOLDINGS
CORPORATION, WINCHESTER TRADING, INC., VYL
DEVELOPMENT CORPORATION, GERICK HOLDINGS
CORPORATION, AND NEIGHBORHOOD HOLDINGS, INC.,
RESPONDENTS.**

D E C I S I O N

VELASCO JR., J.:

This is a petition for review under Rule 45 which seeks the reversal of the July 16, 2004 Decision^[1] and October 1, 2004 Resolution^[2] of the Court of Appeals (CA) in CA-G.R. SP No. 82800. The CA upheld the November 11, 2003 *en banc* resolution^[3] of the Securities and Exchange Commission (SEC) and the orders dated October 10, 2000^[4] and April 26, 2001^[5] by the SEC Hearing Panel in SEC Case No. 05-00-6609, thus effectively affirming the Rehabilitation Plan submitted by private respondents herein and the appointment of a rehabilitation receiver.

The Facts

Petitioners Philippine National Bank (PNB) and Equitable PCI Bank are members of the consortium of creditor banks constituted pursuant to the Mortgage Trust Indenture (MTI) ^[6] dated May 29, 1989, as amended, by and between Rizal Commercial Banking Corporation-Trust and Investments Division, acting as trustee for the consortium, and ASB Development Corporation (ASBDC, formerly Tiffany Tower Realty Corporation). Other members of the consortium include Metropolitan Bank and Trust Company (Metrobank), Prudential Bank, Union Bank of the Philippines, and United Coconut Planters Bank. Private respondents ASB Holdings, Inc., ASBDC, ASB Land, Inc., ASB Finance, Inc., Makati Hope Christian School, Inc., Bel-Air Holdings Corporation, Winchester Trading, Inc., VYL Holdings Corporation, and Neighborhood Holdings, Inc. (ASB Group) are corporations engaged in real estate development. The ASB Group is owned by Luke C. Roxas.^[7] Under the MTI, petitioners granted a loan of PhP 1,081,000,000 to ASBDC secured by a mortgage of five parcels of land with improvements.^[8]

On May 2, 2000, private respondents filed with the SEC a verified petition for rehabilitation with prayer for suspension of actions and proceedings pending

rehabilitation pursuant to Presidential Decree No. (PD) 902-A, as amended. The case was docketed as SEC Case No. 05-00-6609. Private respondents stated that they possess sufficient properties to cover their obligations but foresee inability to pay them within a period of one year. They cited the sudden non-renewal and/or massive withdrawal by creditors of their loans to ASB Holdings, the glut in the real estate market, severe drop in the sale of real properties, peso devaluation, and decreased investor confidence in the economy which resulted in the non-completion of and failure to sell their projects and default in the servicing of their credits as they fell due. The ASB Group had assets worth PhP 19,410,000,000 and liabilities worth PhP 12,700,000,000. Faced with at least 712 creditors, 317 contractors/suppliers, and 492 condominium unit buyers, and the prospect of having secured and non-secured creditors press for payments and threaten to initiate foreclosure proceedings, the ASB Group pleaded for suspension of payments while working for rehabilitation with the help of the SEC.^[9]

Private respondents mentioned that in March 2000 and immediately after ASB Holdings incurred financial problems, they agreed to constitute a Creditor's Committee composed of representatives of individual creditors, and to appoint a Comptroller. Private respondents stated that the Comptroller, upon instruction from the Creditor's Committee, withheld approval of payments of obligations in the ordinary course of business such as those due to contractors, unless Roxas agrees to the payment of interest and other arrangements. Private respondents believed that said conditions would eventually harm the general body of their creditors. Private respondents prayed for the suspension of payments to creditors while working out the final terms of a rehabilitation plan with all the parties concerned. Private respondents' petition to the SEC was accompanied by documentary requirements in accordance with Section 4-2 in relation to Sec. 3-2 of the Rules of Procedure on Corporate Recovery.^[10]

Finding the petition sufficient in form and substance, the SEC Hearing Panel^[11] issued on May 4, 2000 an order suspending for 60 days all actions for claims against the ASB Group, enjoining the latter from disposing its properties in any manner except in the ordinary course of business and from paying outstanding liabilities, and appointing Atty. Monico V. Jacob as interim receiver of the ASB Group. Atty. Jacob was later replaced by Atty. Fortunato Cruz as interim receiver. ^[12]

The consortium of creditor banks, which included petitioners, filed their Comments/Opposition praying for the dismissal of the petition based on the following grounds:

- (a) Petitioners failed to state a valid cause of action;
- (b) Petitioners failed to comply with the requirements of the Rules of Procedure on Corporate Recovery;
- (c) The Rehabilitation Plan has no basis and offers no solution to address the financial difficulties of petitioners;
- (d) There is no need for a Receiver as petitioners claim that they are solvent;
- (e) The filing of the Petition does not warrant the issuance of a suspension order;
- (f) The Petition should cover only one (1) corporation and should not include the affiliates and subsidiaries
- (g) Petitioners are under the regulatory supervision of various

- governmental agencies and their respective consents to the filing of the instant Petition have not been obtained;
- (h) The circumstances surrounding the filing of the Petition are replete with evidence of fraud and bad faith; and
 - (i) Petitioners do not appear to have sufficient properties to cover their liabilities.^[13]

On August 18, 2000, the ASB Group submitted a rehabilitation plan to enable it to meet all of its obligations. The consortium of creditor banks moved for its disapproval on the ground that it is not viable; the proposals are unrealistic; and it collides with the freedom of contract and the constitutional right against non-impairment of contracts, particularly the release of portions of mortgaged properties and waiver of interest, penalties, and other charges. The banks further asserted that the Rehabilitation Plan does not explain the basis of the selling values and the net realizable values of the properties; it irregularly nets out inter-corporation transactions and offsets the receivables amounting to PhP 5.23 billion from Roxas; and it shows that the ASB Group is insolvent and should be subjected to liquidation proceedings. The banks opposed the extension of the suspension order sought by the ASB Group. The consortium also prayed for the early resolution of their opposition to the petition.

On October 10, 2000, the Hearing Panel denied the opposition of the banks and held that the ASB Group complied with the requirements of Sec. 4-1 of the Rules of Procedure on Corporate Recovery, which allows debtors who are technically insolvent to file a petition for rehabilitation. Since the ASB Group foresees its inability to meet its obligations within one year, it was considered technically insolvent and, thus, qualified for rehabilitation under Sec. 4-1. The Panel further held that under Sec. 4-4, suspension of payments is necessarily an effect of the filing of the petition. The appointment of an Interim Receiver as well as the issuance of a 60-day suspension order is mandatory under Sec. 4-4, Rule IV. The ASB corporations are not precluded from jointly filing the petition for rehabilitation since these are beneficially owned by Roxas, their businesses and finances are intertwined such that they made advances to each other and secured their obligations with each other's properties. Joint filing of petition is allowed under Secs. 6 and 7, Rule 3 of the 1997 Rules of Civil Procedure and under case law. As regards the regulatory jurisdiction of the Housing and Land Use Regulatory Board and the Department of Education, Culture and Sports (now the Department of Education) over the business of selling real estate and academic activities of the school, the Hearing Panel held that said jurisdiction does not extend to the petitioning corporations as juridical entities by themselves. With regard to ASB Holdings, the consent of the Central Bank is not required since said corporation is not engaged in quasi-banking operations. Also, the Hearing Panel held that the Creditors Committee was created to address the concerns of the investors of ASB Holdings and did not include the creditor banks. The Hearing Panel found the filing of the petition for suspension of payments and rehabilitation as a sign of good faith on the part of private respondents to settle their obligations.

Upon motion by the ASB Group, the suspension period was extended through an order dated October 27, 2000. The creditor banks appealed the October 10 and 27, 2000 orders by filing before the SEC *en banc* a Petition for Review on Certiorari with application for a temporary restraining order.^[14]

On April 26, 2001, the Hearing Panel approved the Rehabilitation Plan based on the following rationale:

After due deliberation, the Hearing Panel finds that the objections raised by the oppositors are unreasonable and rules to approve the rehabilitation plan.

With regard to the contention of the secured creditors that the Plan infringes upon preference over secured property, the Panel finds this objection unreasonable. According to the Supreme Court in the RCBC vs. IAC G.R. No. 74851 December 9, 1999, and we quote:

The majority ruling in our 1992 decision that preferred creditors of distressed corporations shall, in a way, stand on equal footing with all other creditors, must be read and understood in the light of the foregoing rulings. All claims of both a secured or unsecured creditor, without distinction on this score, are suspended once a management committee is appointed. Secured creditors, in the meantime, shall not be allowed to assert such preference before the Securities and Exchange Commission. x x x

With our approval of the Plan and the appointment of a rehabilitation receiver, the secured creditors may not assert their preferred status while the case is pending before the Commission. It is only when the assets of the corporation, partnership, or association are finally liquidated, that the secured and preferred creditors under the applicable provisions of the Civil Code will apply.

As to the creditors' contention that the plan did not explain or provide for the basis of the selling values and the net realizable values of the property, we find the same untenable. A reading of the plan as well as the explanation made by the Petitioners, show that the computation was shown as to the manner upon which the petitioners derived the Net Realizable Values. Moreover the Petitioners explained that these values are not much higher than the Cuervo appraisals in 1997 and 2000.

The Interim Receiver appointed by the Commission recommended the approval of the Plan. According to him, the fixed assets of Petitioners are mortgaged to banks and that the bank loans are mostly over collateralized. If the Plan is not approved, the secured creditors will foreclose on the mortgages and will acquire these properties at a value much less than the fair market value. When the Petitioners lose these fixed property, it will not be able to pay their obligation to the 172 individual unsecured creditors with an exposure of P3,951,216,266 and the 317 contractors with an exposure of P58,116,903, and will not be able to deliver sold units to 725 buyers. Therefore, the disapproval of the Plan will greatly prejudice all the other creditors who will be left unpaid.

The Panel agrees with the position taken by the Interim Receiver that we should look into the far-reaching effect of the Plan. The Panel should balance the interests between the secured creditors and the unsecured who may not have any recourse if the Plan is not approved. In this

manner we agree with the argument of the individual creditors that we should consider the public interest aspect of this rehabilitation proceeding wherein there are about 725 individually affected creditors with a total stakes of P4 Billion, more than the stake of the bank creditors. The approval of the Plan will not deprive the secured creditors of their right to the mortgaged assets. If there is a subsequent failure of rehabilitation, the availment of their suspended rights over the mortgaged assets will be restored. On the other hand, as earlier stated, the unjustified disapproval of the Plan will greatly prejudice the unsecured creditors who will be left unable to recover their investments or collect their claims.

The Panel however finds that adjustments and set off with regard to the advances made by Mr. Luke Roxas should not be allowed. This however, does not in anyway affect the viability of the Plan.

Meanwhile, the resolution on the Motion for Exclusion of the ASB-Malayan Towers from the assets claimed by petitioners is hereby deferred.

PREMISES CONSIDERED, the objections to the rehabilitation plan raised by the creditors are hereby considered unreasonable.

Accordingly, the Rehabilitation Plan submitted by petitioners is hereby APPROVED, except those pertaining to Mr. Roxas' advances, and the ASB-Malayan Towers. Finally, Interim Receiver Mr. Fortunato Cruz is appointed as Rehabilitation Receiver.

SO ORDERED. ^[15]

The creditors filed a Supplemental Petition for Review on Certiorari with the SEC *en banc* to question the foregoing order. On November 11, 2003, the SEC *en banc* dismissed the petition and its supplement, thus affirming the October 10, 2000 and April 26, 2001 orders of the Hearing Panel. The SEC *en banc* held:

We rule against petitioner.

First, the Commission En Banc, in three separate cases, had affirmed the approval by the Hearing Panel of the Rehabilitation Plan of private respondents. We declared that the Hearing Panel acted within its legal authority in resolving the petition for rehabilitation of private respondents. Neither it overstepped its lawful authority nor acted whimsically in approving the subject Rehabilitation Plan. Hence, it could not be faulted of grave abuse of discretion. We could not arrive at different conclusion in the instant case other than uphold the approval of private respondents' Rehabilitation Plan.

Second, it is noteworthy to mention that as of 31 December 2002, fifty-four percent (54%) of the total obligations of private respondents with creditor banks have been settled. That constitutes majority of the total obligations owned by private respondents to secured creditors.

WHEREFORE, premises considered, the instant petition is DISMISSED. Accordingly, the assailed Orders are AFFIRMED.