

## EN BANC

[ G.R. Nos. 177857-58, September 17, 2009 ]

**PHILIPPINE COCONUT PRODUCERS FEDERATION, INC. (COCOFED), MANUEL V. DEL ROSARIO, DOMINGO P. ESPINA, SALVADOR P. BALLARES, JOSELITO A. MORALEDA, PAZ M. YASON, VICENTE A. CADIZ, CESARIA DE LUNA TITULAR, AND RAYMUNDO C. DE VILLA, PETITIONERS, VS. REPUBLIC OF THE PHILIPPINES, RESPONDENT. JOVITO R. SALONGA, WIGBERTO E. TAÑADA, OSCAR F. SANTOS, ANA THERESIA HONTIVEROS, AND TEOFISTO L. GUINGONA III, OPPOSITORS-INTERVENORS.**

### R E S O L U T I O N

**VELASCO JR., J.:**

For consideration is the *Urgent Motion to Approve the Conversion of the SMC Common Shares into SMC Series 1 Preferred Shares* dated July 24, 2009 (Motion) interposed by petitioners Philippine Coconut Producers Federation, Inc., et al. (collectively, COCOFED). COCOFED seeks the Court's approval of the conversion of 753,848,312 Class "A" and Class "B" common shares of San Miguel Corporation (SMC) registered in the names of Coconut Industry Investment Fund and the so-called "14 Holding Companies" (collectively known as "CIIF companies") into 753,848,312 SMC Series 1 Preferred Shares (hereinafter, the Conversion).

SMC's conversion or stock exchange offer is embodied in its *Information Statement*<sup>[1]</sup> and yields the following relevant features:

Instrument - Peso denominated, perpetual, cumulative, **non-voting preferred shares with a par value of Php 5.00 per share and Issue Price of Php 75 per share.**

Dividend Rate - The SMC Board of Directors shall have the sole discretion to declare dividends on the Series 1 Preferred Shares as redeemed by SMC, the **dividend rate shall be at a fixed rate of 8% per annum**, payable quarterly and **calculated by reference to the issue price.**

Dividend Rate Step Up - Unless the Series 1 Preferred Shares are redeemed by SMC, the **Dividend Rate shall be adjusted at the end of the fifth year** to the higher of (a) the Dividend Rate or (b) the prevailing 10-year PDSTF rate plus a spread of 300 bps.

Optional Redemption and Purchase - SMC has the option, but not the obligation, to redeem all or part of the Series 1 Preferred Shares on the third anniversary from the Issue Date or on any Dividend Date thereafter at a redemption price equal to the Issue price of the Preferred Shares

plus all cumulated and unpaid cash dividends.

Preference in the event of the liquidation of SMC - The Series 1 Preferred Shares shall have preference over the common shares.

Selling costs - All selling costs pertaining to the Common Shares shall be borne by the common shareholders. x x x (Emphasis added.)

COCOFED proposes to constitute a trust fund to be known as the "Coconut Industry Trust Fund (CITF) for the Benefit of the Coconut Farmers," with respondent Republic, acting through the Philippine Coconut Authority (PCA), as trustee. As proposed, the constitution of the CITF shall be subject to terms and conditions which, for the most part, reiterate the features of SMC's conversion offer, albeit specific reference is made to the shares of the 14 CIIF companies. Among the terms and conditions are the following:

Standard 1. There must be a prior approval by this Honorable Court in this instant case G.R. No. 177857-58 entitled "COCOFED, et. al. vs. Republic of the Philippines", of the conversion of the sequestered SMC Common Shares, Both Class "A" and Class "B", registered in the respective names of the 14 CIIF Holding Companies, into SMC Series 1 Preferred Shares.

Standard 2. The SMC shares to be exchanged are all the shares of stock of SMC that are presently sequestered and registered in the respective names of the 14 CIIF Holding Companies in the total number of 753,848,312, both Class "A" and Class "B" shares x x x (hereinafter, collectively referred to as the "SMC Common Shares").

x x x x

Standard 4. The SMC Common Shares shall be converted at an exchange ratio of one (1) SMC Series 1 Preferred Share (hereinafter, "SMC Series 1 Preferred Share") for every one (1) SMC Common Share tendered. Each SMC Series 1 Preferred Share shall have a par value of (P5.00) per share and an Issue Price of Seventy Five Pesos per share (P75.00). Dividends on the SMC Series 1 Preferred Share shall be cumulative and with dividend rate of 8% per annum computed on the Issue Price of Seventy Five Pesos (P75.00) per share.

x x x x

Standard 6. If and when SMC exercises its right, but not an obligation, to redeem after a period of three (3) years the SMC Series 1 Preferred Shares, the redemption shall in no case be less than the Issue Price of Seventy Five Pesos (P75.00) per share plus unpaid cumulative dividends.

x x x x

Standard 8. Upon written appointment to the Board of Governors of the

[PCA] of the three (3) nominees submitted to the President of the Philippines by the [COCOFED], as required by PD 1468, a trust fund is thereby automatically created to be identified and known as the "Coconut Industry Trust Fund (CITF) For the Benefit of the Coconut Farmers" and the trustee of the Coconut Industry Trust fund shall be: "The Republic of the Philippines Acting Through the Philippine Coconut Authority for the Benefit of the Coconut Farmers."

Standard 9. The initial capital of the [CITF] shall be the SMC Series 1 Preferred Shares that will be issued by SMC as herein described.

Standard 10. Within ten (10) days from and after the date of the final approval by this Honorable Court of the Conversion, the Republic of the Philippines, acting through the Presidential Commission on Good Government through its duly authorized Chairman, shall deliver to SMC these documents.

x x x x

Standard 11. As the issuer, SMC shall within a reasonable period from a trade, or exchange, of the SMC Common Shares into 753,848,312 SMC Series 1 Preferred Shares through the facilities of the Philippine Stock Exchange, deliver duly-signed and issued SMC Series 1 Preferred Stock Certificate(s) in the name of "The Republic of the Philippines acting through the Philippine Coconut Authority as Trustee of the Coconut Industry Trust Fund (CITF) For the Benefit of the Coconut Farmers."

Standard 12. Upon compliance by the SMC with its reciprocal obligations according to the terms and intent of the approval by this Honorable Court, then it shall acquire absolute ownership of the SMC Common Shares free from all liens, writs, demands, or claims x x x.

Standard 13. The trustee of the [CITF] shall have no authority to sell, dispose, assign, encumber or otherwise impair the value of the SMC Series 1 Preferred Shares, unless the same are redeemed by SMC in accordance with its Articles of Incorporation, as amended.

Standard 14. For purposes of ascertaining x x x the identities and addresses of coconut farmers, the beneficiaries of the developmental projects herein authorized to be financed, a ground survey of coconut farmers as presently defined, or hereafter defined, by the [PCA], shall be conducted by the [PCA] x x x.

Standard 15. Thirty (30) days after the receipt of any dividend paid on the SMC Series 1 preferred Shares, the net proceeds x x x shall be disbursed by the Trustee in favor of these entities in these proportions:

- a. Forty percent (40%) - Coconut Industry Trust Fund constituted under Paragraph 11, Standard 8 and Standard 9 hereof which the Trustee should invest and re-invest only in the permissible investments authorized under Paragraph 11, Standard 16.

b. Twenty percent (20%) - To the (PCA) "in trust and for the benefit of the coconut farmers", being the governmental agency designated by law to implement projects for the coconut industry.

c. Twenty percent (20%) - To the [COCOFED], in its capacity as the duly recognized organization of the coconut farmers with the highest membership.

d. Twenty percent (20%) - To the PCA Accredited Other Coconut Farmers' organizations - The trustee shall disburse this allocation to each and all of those PCA Accredited Other Coconut Farmers Organizations.

Standard 16. In the event of redemption of the SMC Series 1 Preferred Shares, whether in full or in part, the proceeds of such redemption shall form part of the capital of the [CITF] which the Trustee shall invest, within a period of forty eight (48) hours from receipt of the proceeds of such redemption, and reinvest in these permissible investments x x x.<sup>[2]</sup>

To the basic motion, respondent Republic filed its Comment questioning COCOFED's personality to seek the Court's approval of the desired conversion. Respondent Republic also disputes COCOFED's right to impose and prescribe terms and conditions on the proposed conversion, maintaining that the CIIF SMC common shares are sequestered assets and are in *custodia legis* under Presidential Commission on Good Government's (PCGG's) administration. It postulates that, owing to the sequestered status of the said common shares, only PCGG has the authority to approve the proposed conversion and seek the necessary Court approval. In this connection, respondent Republic cites *Republic v. Sandiganbayan*<sup>[3]</sup> where the coconut levy funds were declared as *prima facie* public funds, thus reinforcing its position that only PCGG, a government agency, can ask for approval of the conversion.

On September 4, 2009, Jovito R. Salonga and four others sought leave to intervene. Attached to the motion was their Comment/Opposition-in-Intervention, asserting that "the government bears the burden of showing that the conversion is indubitably advantageous to the public interest or will result in clear and material benefit. Failure of the government to carry the burden means that the current status of the sequestered stocks should be maintained pending final disposition of G.R. Nos. 177857-58." They further postulate that "even assuming that the proposal to convert the SMC shares is beneficial to the government, it cannot pursue the exchange offer because it is without power to exercise acts of strict dominion over the sequestered shares." Lastly, they argue that "the proposed conversion x x x is not only not advantageous to the public interest but is in fact positively disadvantageous."

On September 4, 2009, respondent Republic filed a Supplemental Comment in which it cited the Partial Summary Judgment rendered by the Sandiganbayan on May 27, 2004 in Civil Case No. 33-F, declaring the Republic as owner, in trust for the coconut farmers, of the subject CIIF SMC shares (27%). The same comment also referred to Resolution No. 365-2009 passed on August 28, 2009 by the United Coconut Planters Bank (UCPB) Board of Directors expressing the sense that "the

proposed conversion of the CIIF SMC common shares to SMC Series I preferred shares is financially beneficial."<sup>[4]</sup> Reference was also made to PCGG Resolution 2009-037-756 dated September 2, 2009, requesting the Office of the Solicitor General (OSG) to seek approval of this Court for the proposed conversion.<sup>[5]</sup> By way of relief, respondent Republic prayed that the PCGG be allowed to proceed and effect the conversion.

On the preliminary issue as to the proper party to seek the imprimatur on the conversion, the Court rules that it is the PCGG, not COCOFED, that is authorized to seek the approval of the Court of the Series 1 preferred shares conversion.

As records show, PCGG sequestered the 753,848,312 SMC common shares registered in the name of CIIF companies on April 7, 1986.<sup>[6]</sup> From that time on, these sequestered shares became subject to the management, supervision, and control of PCGG, pursuant to Executive Order No. (EO) 1, Series of 1986, creating that commission and vesting it with the following powers:

Sec. 3. The Commission shall have the power and authority:

x x x x

(b) To sequester or place or cause to be placed under its control or possession any building or office wherein any ill-gotten wealth or properties may be found, and any records pertaining thereto, in order to prevent their destruction, concealment or disappearance which would frustrate or hamper the investigation or otherwise prevent the Commission from accomplishing its task.

(c) To provisionally take over in the public interest or to prevent its disposal or dissipation, business enterprises and properties taken over by the government of the Marcos Administration or by entities or persons close to former President Marcos, until the transactions leading to such acquisition by the latter can be disposed of by the appropriate authorities.

Eventually, the coconut levy funds that were used to acquire the sequestered CIIF SMC common shares in question were peremptorily determined to be *prima facie* public funds. The Court, in *Republic v. COCOFED*,<sup>[7]</sup> elucidated on the nature of the coconut levy funds:

#### *Coconut Levy Funds Are Prima Facie Public Funds*

To avoid misunderstanding and confusion, this Court will even be more categorical and positive than its earlier pronouncements: the coconut levy funds are not only affected with public interest; they are, in fact, *prima facie* public funds.

Public funds are those moneys belonging to the State or to any political subdivision of the State; more specifically, taxes, customs duties and