

## SECOND DIVISION

[ G.R. NO. 146214, October 05, 2007 ]

**RODOLFO M. CUENCA, PETITIONER, VS. HON. ALBERTO P. ATAS, JULITO F. FABRERO, AND HON. NATHANIEL A. LOBIGAS, IN THEIR CAPACITY AS HEARING OFFICERS OF THE SECURITIES AND EXCHANGE COMMISSION; PHILIPPINE NATIONAL CONSTRUCTION CORPORATION, ASSET PRIVATIZATION TRUST, PHILIPPINE NATIONAL BANK, DEVELOPMENT BANK OF THE PHILIPPINES, NATIONAL DEVELOPMENT COMPANY, PHILIPPINE EXPORT AND FOREIGN LOAN GUARANTEE CORPORATION, AND GOVERNMENT SERVICE INSURANCE SYSTEM, RESPONDENTS.**

### D E C I S I O N

**VELASCO, JR., J.:**

#### The Case

In this Petition for Review on Certiorari<sup>[1]</sup> of the adverse November 29, 2000 Decision<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 60366, petitioner Rodolfo M. Cuenca, in effect, questions the July 10, 2000 Decision<sup>[3]</sup> of the Securities and Exchange Commission (SEC) Securities Investigation and Clearing Department (SICD) in SICD SEC Case No. 05-96-5357 entitled *Rodolfo M. Cuenca v. Philippine National Construction Corporation (PNCC), et al.*, which declared defendants-government financial institutions (GFIs) as majority stockholders of the PNCC. The SICD Decision was affirmed by the SEC in SEC Case No. AC 807, which, in turn, was upheld by the CA in its assailed November 29, 2000 Decision.

#### The Facts

Petitioner was an incorporator, President, and Chief Executive Officer of the then Construction Development Corporation of the Philippines (CDCP), now PNCC, from its incorporation in 1966 until 1983. Sometime in 1977, CDCP was granted a franchise under Presidential Decree No. 1113 to construct, operate, and maintain toll facilities of the North and South Luzon Expressway. In the course of its operations, it incurred substantial credit obligations from both private and government sources.

However, its unpaid obligations ballooned so much that by 1983, it became impossible for it to settle its maturing and overdue accounts with various GFIs, namely, the Philippine National Bank (PNB), Development Bank of the Philippines (DBP), National Development Company (NDC), Government Service Insurance System (GSIS), Land Bank of the Philippines (LBP), and Philippine Export and Foreign Loan Guarantee Corporation (PEFLGC), now known as the Trade and Investment Development Corporation of the Philippines.

On February 23, 1983, then President Ferdinand E. Marcos issued Letter of Instruction No. (LOI) 1295,<sup>[4]</sup> directing the creditor GFIs to convert into CDCP's shares of stock the following: (1) all of the direct obligations of CDCP and those of its wholly-owned subsidiaries, including, but not limited to loans, credits, accrued interests, fees and advances in any currency outstanding as of December 31, 1982; (2) the direct obligations of CDCP maturing in 1983; and (3) obligations maturing in 1983 which were guaranteed by the GFIs.

On April 25, 1983, a special stockholders' meeting, presided by petitioner, was held whereby stockholders representing more than two-thirds (2/3) of the outstanding capital stock of CDCP approved the increase of its authorized capital stock from PhP 1.6 to 2.7 billion in accordance with LOI 1295. Thus, the CDCP, pursuant to said letter, converted some of its obligations to GFIs into equity.

Consequently, CDCP issued common shares to DBP, NDC, GSIS, LBP, PEFLGC, and preferred "D" shares to PNB in consideration for the extinguishment of some of CDCP's outstanding loan obligations to said GFIs, all of which were duly recorded in its corporate books. Subsequently, in December 1983, the SEC approved the increase of CDCP's authorized capital stock, and the corresponding CDCP Certificates of Stock were issued in the names of DBP, GSIS, LBP, PEFLGC, and PNB, to wit:

<u>Certificates of stock issued</u>	<u>Name</u>	<u>No. of shares issued to GFIs</u>
Cert. of Stock No. 40269 <sup>[5]</sup>	DBP	26,987,477 common shares
Cert. of Stock No. 40270 <sup>[6]</sup>	PEFLGC	37,584,577 common shares
Cert. of Stock No. 40271 <sup>[7]</sup>	GSIS	47,490,000 common shares
Cert. of Stock No. 40272	LBP	657,836 common shares
Cert. of Stock No. N <sup>[8]</sup>	PNB	25,500,000 Preferred Class "D"

The total subscription of the above issuance of shares of stock pursuant to LOI 1295 amounted to PhP 1,405,202,000 or 1.4 billion.

Thus, with the implementation of LOI 1295, respondents-GFIs became the majority stockholders of CDCP to the extent of 70% of the authorized capital stocks. The change in the corporation's ownership was made public through various announcements.<sup>[9]</sup> CDCP was later renamed to PNCC to reflect the Philippine Government stockholding, and became a government-acquired asset corporation. Consequently, the various GFIs were given seats in the Board of Directors of PNCC and participated in the management of the company.

On August 19, 1987, PNCC issued Certificate of Stock No. 43032 in the name of NDC for 14,699,000 shares of common stock.

Meanwhile, sometime in 1988, pursuant to Administrative Order Nos. 14 and 64, DBP, PNB, PEFLGC, and NDC transferred their interests in PNCC to the Republic of

the Philippines which in turn conveyed them to the Asset Privatization Trust (APT), now the Privatization and Management Office, for disposition to the private sector pursuant to the government's privatization program.

On May 31, 1996, more than a decade after LOI 1295 was implemented, petitioner filed a complaint before the SEC SICD docketed as SEC Case No. 05-96-5357 entitled *Rodolfo M. Cuenca v. PNCC, et al.*, for the SEC to determine and declare whether the GFIs were registered stockholders of PNCC and the number of shares held by each of them and to compel PNCC to call and hold regular stockholders' meetings and election of directors every year.

Petitioner averred that while PNCC issued the above specified certificates of stock to the GFIs pursuant to LOI 1295, the GFIs however refused to cancel and never did cancel the loans in their books as payment for the shares issued in their names by PNCC as "they considered it to be a diminution of the value of their investments." Thus, petitioner claimed that some of the GFIs refused to accept delivery of the stock certificates from PNCC while others were not even aware of the issuance of the certificates of stock in their names. Consequently, respondents-GFIs continued to charge and receive payments for their loan and interest charges from PNCC though these loans were supposed to have been converted into common stock in 1983 pursuant to LOI 1295.

In March 1998, with the idea of spinning-off its toll-way operations, PNCC scheduled a special stockholders' meeting on April 14, 1998. On March 31, 1998, petitioner filed before the SEC SICD an Urgent Application for Temporary Restraining Order (TRO) and Writ of Preliminary Injunction seeking to enjoin PNCC from allowing the GFIs to vote their shares of stock in PNCC, either issued or subscribed, pursuant to LOI 1295, and from exercising any right arising from the shares.

On April 14, 1998, the date of the special stockholders' meeting of PNCC, the SEC SICD, through its hearing officer, granted petitioner's urgent application and issued a TRO enjoining the GFIs from voting their shares of stock in PNCC.<sup>[10]</sup> Thereafter, the parties presented their respective preliminary evidence during the hearings for the issuance of a preliminary injunction.

Meanwhile, despite the pendency of SICD SEC Case No. 05-96-5357, petitioner filed a Third Amended Complaint<sup>[11]</sup> before the Makati City Regional Trial Court (RTC), Branch 142, docketed as Civil Case No. 95-1356 and entitled *Rodolfo M. Cuenca, for and in behalf of PNCC v. APT, et al.* for (1) enforcement and strict compliance with LOI 1295; (2) cancellation of all penalties, interest, and surcharges accrued after December 31, 1982; (3) enjoinder of the GFIs from receiving any real or personal properties from PNCC; and (4) cancellation of the transfer of Lot 3, Block 1, RL-04-000001 covered by Transfer Certificate of Title (TCT) No. 34996 to APT.

On September 8, 1998, the SEC SICD issued an Order<sup>[12]</sup> granting the preliminary injunction. PNCC's Motion for Reconsideration was then denied in the December 21, 1998 SEC SICD Omnibus Order.<sup>[13]</sup> Thus, on January 8, 1999, PNCC filed a Petition for Certiorari<sup>[14]</sup> before the SEC *en banc* to review and set aside the September 8, 1998 and December 21, 1998 SEC SICD Orders, docketed as SEC-EB Case No. 640. On March 14, 2000, the SEC *en banc* issued an order dismissing PNCC's petition. Consequently, PNCC brought before the CA the SEC *en banc* March 14, 2000 Order

through a Petition for Review,<sup>[15]</sup> docketed as CA-G.R. SP No. 58117.

In the meantime, on May 20, 1999, petitioner filed a Motion to Admit Amended Complaint in SEC SICD Case No. 05-96-5357, which was granted despite oppositions from PNCC and the GFIs. Respondents PNCC and GFIs then filed their respective answers to the amended complaint.

On March 23, 2000, PNCC filed a Motion to Designate Hearing Panel<sup>[16]</sup> on the ground that the instant case would be better heard and resolved by a hearing panel of three than by a sole hearing officer, considering the interests the Philippine Government holds in PNCC through the GFIs. This was opposed by petitioner. Nonetheless, while not finding any valid reason for said motion, respondent SEC SICD Hearing Officer Alberto P. Atas granted PNCC's motion through the April 6, 2000 Order<sup>[17]</sup> "to allay respondent PNCC's fear that it may not be able to obtain a sense of fairness and justness in the determination of the merits of its claims." No Motion for Reconsideration of the April 6, 2000 Order was filed by petitioner.

Consequently, SEC SICD Director Daisy Besa-De Asis designated respondents Hearing Officers Alberto P. Atas, Julito F. Fabrero, and Nathaniel A. Lobigas as the three (3)-person Hearing Panel.

During the hearings of the instant case, through a May 4, 2000 Order, the Hearing Panel admitted almost all of petitioner's exhibits. On May 8, 2000, PNCC filed an Amended Answer<sup>[18]</sup> raising a new matter of the April 14, 2000 Deed of Confirmation and June 7, 2000 Supplement to Deed of Confirmation. On June 1, 2000, the Hearing Panel admitted PNCC's Amended Answer through an Order.<sup>[19]</sup>

On June 2, 2000, the Hearing Panel scheduled a new preliminary conference on June 13, 2000. At the hearing on June 5, 2000, due to conflicts with the schedules of some of the parties' counsels, the preliminary conference was moved to June 29, 2000. However, on June 6, 2000, PNCC filed an Urgent Motion<sup>[20]</sup> praying that the preliminary conference be reset back to the original schedule of June 13, 2000 so as to follow the proviso in the SEC Rules of Procedure. PNCC's Urgent Motion was granted through a June 8, 2000 Order,<sup>[21]</sup> and the preliminary conference was reset back to June 13, 2000.

In the preliminary conference on June 13, 2000, petitioner adopted his previous preliminary conference brief dated November 15, 1999. PNCC and APT filed their preliminary conference briefs dated June 8, 2000 and June 13, 2000, respectively; while DBP, GSIS, PNB, and PEFLGC adopted their respective preliminary conference briefs previously filed. On the same date, petitioner was barred from presenting additional evidence due to his failure to file a reply to PNCC's Amended Answer and to file an amended preliminary conference brief together with the affidavits of witnesses as required by the new SEC Rules.

On June 13 and 14, 2000, PNCC adopted the testimonial and documentary evidence it presented during the hearing on the preliminary injunction as part of its evidence-in-chief and adduced further additional witnesses and documentary evidence to substantiate the new matter presented in its amended answer. The GFIs adopted PNCC's evidence which was orally offered by PNCC over petitioner's objection.

The Hearing Panel scheduled the reception of petitioner's rebuttal evidence on June 19 and 20, 2000. However, on June 19, 2000, instead of presenting rebuttal evidence, petitioner filed a Motion to Admit Second Amended Complaint, but an opposition was filed to it by respondents for being dilatory.

On June 21, 2000, PNCC filed a Motion to Terminate Plaintiff's Rebuttal Evidence and to Submit the Case for Decision on the Merits<sup>[22]</sup> which was opposed<sup>[23]</sup> by petitioner. On July 3, 2000, the Hearing Panel issued an Omnibus Order<sup>[24]</sup> denying petitioner's motion to admit second amended complaint, granted PNCC's motion to terminate petitioner's rebuttal evidence, and submitted the case for resolution on the merits. Thus, the instant case was submitted for decision on the merits based on the pleadings, evidence, and other submissions of the parties.

### **The Ruling of the SEC SICD**

On July 10, 2000, the Hearing Panel rendered its Decision dismissing petitioner's complaint for lack of merit and revoking the writ of preliminary injunction issued on September 8, 1998. The *fallo* reads:

WHEREFORE, plaintiff's Complaint is hereby dismissed for lack of merit and the Orders dated April 14, 1998 and September 8, 1998 are hereby revoked and set aside.<sup>[25]</sup>

The Hearing Panel found that the evidence presented by PNCC and GFIs constituted substantial proof of the implementation of LOI 1295. It reasoned that not only did PNCC issue the shares of stock as shown in its stock ledger cards but such fact was corroborated by Caval Securities Registry, Inc., PNCC's stock transfer agent, which prepared PNCC's September 15, 1987 Schedule of Subscription.<sup>[26]</sup> Moreover, prior to the filing of the instant case, the GFIs have been nominating their representatives to PNCC's Board of Directors which is an attribute of ownership of shares of stock in PNCC.

The Hearing Panel also took cognizance of the April 14, 2000 Deed of Confirmation<sup>[27]</sup> and the June 7, 2000 Supplement to Deed of Confirmation<sup>[28]</sup> executed by the GFIs, which erased all doubts on the implementation of LOI 1295 by the conversion of the GFIs' loan receivables from PNCC into the latter's equity. Thus, with the clear consideration of loan receivables for the shares of stock, the shares issued to the GFIs cannot in any way be considered "watered stocks." It cited Section 62 of the Corporation Code which expressly allows the issuance of shares of stock in consideration for previously incurred indebtedness.

Moreover, the Notes to the Financial Statements<sup>[29]</sup> on the Report on Examinations of Financial Statements<sup>[30]</sup> for comparative periods of December 31, 1982 and December 31, 1983 prepared by independent auditors from Carlos J. Valdes & Co., Certified Public Accountants, clearly show the reduction of PNCC loan obligations. Specifically, Note No. 11<sup>[31]</sup> stated that as of December 31, 1983, total obligations already converted into equity amounted to PhP 1,382,202 or roughly 1.4 billion representing the increase of authorized capital stock of PNCC.

On the other hand, the Hearing Panel found the pieces of evidence presented by