

# FIRST DIVISION

[ G.R. No. 209119, October 03, 2018 ]

## PHILIPPINE INTERNATIONAL TRADING CORPORATION, PETITIONER, V. THRESHOLD PACIFIC CORPORATION AND EDGAR REY A. CUALES, RESPONDENTS.

### D E C I S I O N

#### LEONARDO-DE CASTRO, CJ.:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court, as amended, seeking to reverse and set aside the Decision<sup>[1]</sup> dated November 23, 2012 and Resolution<sup>[2]</sup> dated August 30, 2013 of the Court of Appeals in CA-G.R. CV No. 97458.

This case stemmed from a Complaint<sup>[3]</sup> for Sum of Money filed by petitioner Philippine International Trading Corporation (PITC) against respondents Threshold Pacific Corporation (TPC) and Edgar Rey A. Cuales (Cuales) docketed as Civil Case No. 94-2266 before the Regional Trial Court (RTC), Branch 139, Makati City.

Petitioner PITC is a government-owned and controlled corporation created under Presidential Decree No. 252,<sup>[4]</sup> as amended later on by Presidential Decree No. 1071,<sup>[5]</sup> to engage in or handle foreign procurement, marketing, and distribution for Philippine and third country enterprises. More particularly, Section 5 of Presidential Decree No. 1071 provides:

*Sec. 5. Purposes of the Corporation.*— The Corporation is hereby authorized:

(a) To engage in or handle for Philippine and third country enterprises through methods, systems, devices and facilities intended to achieve economies of scale and better terms of trade for Philippine business, both foreign procurement as well as foreign marketing and distribution;

(b) To arrange for or established comprehensive facilities for handling all phases of warehousing and to develop and operate physical facilities for the collection, processing and distribution of cargoes and other commodities;

(c) To obtain or arrange more comprehensive protection for activities undertaken or commodities dealt with by monitoring or coordinating risk insurance services for existing institutions or supplementing the same;

(d) To employ, utilize, monitor trade promotion services, facilities and activities being undertaken by government or private agencies;

(e) To promote or organize, whenever warranted, production enterprises and industrial establishment and to collaborate or associate in joint

venture with any person, association, company, or entity, whether domestic or foreign, in the fields of production, marketing, procurement, and such other related business;

(f) To provide technical, advisory investigatory, consultancy and management services with respect to any or all of the functions, activities and operations of the corporation; and,

(g) In general, to undertake such activities as would be appropriate to an institution created for the purposes of international trading.

On the other hand, respondent TPC is a domestic corporation, and respondent Cuales is its Managing Director.

### **Factual Antecedents**

The present controversy involves three key instruments executed between PITC and TPC, viz.: (a) the **Import Financing Agreement** (IFA)<sup>[6]</sup> dated July 5, 1993; (b) the **1<sup>st</sup> Addendum to the IFA**<sup>[7]</sup> (1<sup>st</sup> Addendum) dated July 6, 1993; and the **2<sup>nd</sup> Addendum to the IFA**<sup>[8]</sup> (2<sup>nd</sup> Addendum) dated November 4, 1993 (hereinafter collectively referred to as the Loan).

#### **A. IFA dated July 5, 1993**

The parties, PITC, represented by its President, Jose Luis U. Yulo, Jr. (Yulo), and TPC, represented by its Managing Director, respondent Cuales, executed the IFA whereby PITC agreed to assist TPC financially in the amount of P50,000,000.00 for the latter's importation of urea fertilizers. The salient portions of the agreement are reproduced below:

WHEREAS, the BORROWER has applied for a financial accommodation/assistance from PITC for the purpose of financing its importation of urea fertilizer (the "fertilizer") for resale on credit terms to the Allied Sugarcane Planters Association, Inc. (ASPAI), an association of sugarcane planters with postal address located at BMMC Compound, Bacolod City;

WHEREAS, PITC is able and willing to provide such financial accommodation to the BORROWER subject to the terms and conditions hereinbelow set forth;

NOW THEREFORE, for and in consideration of the foregoing premises and the mutual covenants hereinbelow contained, the parties agree as follows:

#### **I. THE LOAN:**

PITC consents and agrees to provide financial assistance (the "loan") to the BORROWER in the amount of PESOS: FIFTY MILLION (50,000,000.00), Philippine currency, for the sole purpose of financing the BORROWER's importation of urea fertilizer less PITC's commission of US\$3 per metric ton and bank's opening and other charges.

## II. DISBURSEMENT

PITC shall open the necessary letter of credit in favor of the BORROWER's fertilizer supplier upon receipt by the PITC of the following:

- i) A true copy of the Sales Contract between the BORROWER and ASPAI covering the sale of the urea fertilizer, subject of this import financing agreement and the Deed of Assignment of ASPAI's sugar/molasses quedans for CY 1993-1994 issued by the milling company, Noah's Ark Holding Company (hereinafter referred to as "Noah's Ark"), duly endorsed in favor of the BORROWER;
- ii) Originals of Original and/or Transfer Certificates of Title, the appraised value of which shall not be less than P60,000,000.00, duly endorsed to PITC as collateral to secure the post-dated checks in the event these checks become unencashable.
- iii) Post-dated checks issued by ASPAI in favor of PITC as per the following:

<u>Date</u>	<u>Amount</u>
October 1, 1993	P14,000,000.00
November 1, 1993	13,062,500.00
December 1, 1993	12,875,000.00
January 1, 1994	<u>12,687,500.00</u>
TOTAL	<u>P52,625,000.00</u>

- iv) Secretary's Certificate of Threshold Pacific Corporation's Board Resolution authorizing the BORROWER to: (a) enter into this Agreement which shall include the names of the authorized signatory/ies to all papers, notes and documents which shall be necessary to effect the provisions of this Agreement and (b) endorse in favor of PITC the sugar/molasses quedans for the CY 1993-1994 assigned by ASPAI in favor of the BORROWER.
- v) Secretary's Certificate of ASPAI's Board Resolution authorizing ASPAI: (a) to enter into a Sales Contract with BORROWER for the purchase of fertilizer (subject of this agreement) on credit terms which shall include the names of the authorized signatory/ies to all paper, notes and documents necessary for this purpose; (b) to issue post-dated checks in favor of PITC to cover/secure the obligations of the BORROWER hereunder and (c) to execute a Deed of Assignment of their sugar/molasses

quedans for CY 1993-1994 in favor of BORROWER or their nominee up to a value of P50,000,000.00.

### III. INTEREST

The BORROWER shall pay interest on the principal of the Joan at the rate of one and one-half (1.5%) percent a month computed from the date the fertilizer is received by ASPAI. If for any reason ASPAI fails to take hold of the fertilizers within the period agreed upon in the Sales Contract, interests shall be computed 15 days after date when written demand is made by PITC for the payment of the principal loan.

Any and all amounts due and unpaid as per the repayment schedule herein provided shall cause the imposition of an additional penalty interest of 2% a month computed from date the same is due until full payment is made.

x x x x

### IV. REPAYMENT

The principal loan including interests and other charges shall be due and demandable without need of demand in accordance with the following schedule:

<u>INSTALLMENT DATE</u>	<u>AMOUNT DUE</u> (incl. Of interests)
First October	P14,000,000.00
Second 1, 1993	13,062,500.00
Third November	12,875,000.00
Fourth 1, 1993	<u>12,687,500.00</u>
December 1, 1993	
January 1, 1994	
TOTAL	<u>P52,625,000.00</u>

**It is expressly agreed that the BORROWER shall have no right to delay, suspend or forego any payments due hereunder for any reason whatsoever** including but not limited to those relating to the quality/quantity or specifications of the fertilizers imported and financed through this Agreement.

**The BORROWER's liability for payment shall subsist until full payment is received by PITC, regardless of the securities/collaterals herein offered.**

## V. LOAN SECURITY/COLLATERALS

To secure the payment of the principal on the loan including all interest and charges thereon, the BORROWER agrees and binds itself to provide the following securities/collaterals in favor of PITC:

x x x x

- b) Post-dated checks issued by ASPA (sic) in favor of PITC in the amounts and in accordance with the schedules provided for in Paragraph IV hereof.
- c) Originals of Original and/or Transfer Certificates of Title, with appraised value of not less P60,000,000.00, duly endorsed to PITC as collateral to secure the post-dated checks in the event these checks become unencashable.
- d) BORROWER's written assignment/endorsement of the sugar/molasses quedans for CY 1993-1994 issued by Noah's Ark duly assigned by ASPAI in favor of BORROWER. Such assignment/endorsement in favor of PITC must have the written conformity of Noah's Ark.

x x x x

## VIII. EVENTS OF DEFAULT

The following events shall constitute the BORROWER in default and shall render the entire loan obligation or any part hereof including interests and charges and all other amounts payable immediately due and demandable without need of demand or notice of any kind, all of which are hereby waived by the BORROWER:

- a) BORROWER fails to comply with any of the terms of the Trust Receipt issued in favor of PITC;
- b) **Any one or all of the post-dated checks issued by ASPA (sic) in favor of PITC should bounce/or returned for any reason whatsoever;**

x x x x

- f) BORROWER fails to perform any of the terms and conditions of this Agreement and/or fails to repay the loan and accruing interests as per the agreed schedules;

## IX. ATTORNEY'S FEES

Should PITC be constrained to resort to court litigation to enforce or safeguard its rights and interest under this