

## SECOND DIVISION

[ G.R. No. 214866, October 02, 2017 ]

**APEX BANCRIGHTS HOLDINGS, INC., LEAD BANCFUND HOLDINGS, INC., ASIA WIDE REFRESHMENTS CORPORATION, MEDCO ASIA INVESTMENT CORPORATION, ZEST-O CORPORATION, HARMONY BANCSHARES HOLDINGS, INC., EXCALIBUR HOLDINGS, INC., AND ALFREDO M. YAO, PETITIONERS, VS. BANGKO SENTRAL NG PILIPINAS AND PHILIPPINE DEPOSIT INSURANCE CORPORATION, RESPONDENTS.**

### D E C I S I O N

**PERLAS-BERNABE, J.:**

Before the Court is a petition for review on *certiorari*<sup>[1]</sup> filed by petitioners Apex Bancrights Holdings, Inc., Lead Bancfund Holdings, Inc., Asia Wide Refreshments Corporation, Medco Asia Investment Corporation, Zest-O Corporation, Harmony Bancshares Holdings, Inc., Excalibur Holdings, Inc., and Alfredo M. Yao (petitioners) assailing the Decision<sup>[2]</sup> dated January 21, 2014 and the Resolution<sup>[3]</sup> dated October 10, 2014 of the Court of Appeals in CA-G.R. SP No. 129674, which affirmed Resolution No. 571 dated April 4, 2013 of the Monetary Board of respondent *Bangko Sentral ng Pilipinas* (BSP) ordering the liquidation of the Export and Industry Bank (EIB).

### The Facts

Sometime in July 2001, EIB entered into a three-way merger with Urban Bank, Inc. (UBI) and Urbancorp Investments, Inc. (UII) in an attempt to rehabilitate UBI which was then under receivership.<sup>[4]</sup> In September 2001, following the said merger, EIB itself encountered financial difficulties which prompted respondent the Philippine Deposit Insurance Corporation (PDIC) to extend financial assistance to it. However, EIB still failed to overcome its financial problems, thereby causing PDIC to release in May 2005 additional financial assistance to it, conditioned upon the infusion by EIB stockholders of additional capital whenever EIB's adjusted Risk Based Capital Adequacy Ratio falls below 12.5%. Despite this, EIB failed to comply with the BSP's capital requirements, causing EIB's stockholders to commence the process of selling the bank.<sup>[5]</sup>

Initially, Banco de Oro (BDO) expressed interest in acquiring EIB. However, certain issues derailed the acquisition, including BDO's unwillingness to assume certain liabilities of EIB, particularly the claim of the Pacific Rehouse Group against it. In the end, BDO's acquisition of EIB did not proceed and the latter's financial condition worsened. Thus, in a letter<sup>[6]</sup> dated April 26, 2012, EIB's president and chairman voluntarily turned-over the full control of EIB to BSP, and informed the latter that

the former will declare a bank holiday on April 27, 2012.<sup>[7]</sup>

On April 26, 2012, the BSP, through the Monetary Board, issued Resolution No. 686<sup>[8]</sup> prohibiting EIB from doing business in the Philippines and placing it under the receivership of PDIC, in accordance with Section 30 of Republic Act No. (RA) 7653, otherwise known as "The New Central Bank Act."<sup>[9]</sup> Accordingly, PDIC took over EIB.<sup>[10]</sup>

In due course, PDIC submitted its initial receivership report to the Monetary Board which contained its finding that EIB can be rehabilitated or permitted to resume business; ***provided***, that a bidding for its rehabilitation would be conducted, and that the following conditions would be met: (a) there are qualified interested banks that will comply with the parameters for rehabilitation of a closed bank, capital strengthening, liquidity, sustainability and viability of operations, and strengthening of bank governance; and (b) all parties (including creditors and stockholders) agree to the rehabilitation and the revised payment terms and conditions of outstanding liabilities.<sup>[11]</sup> Accordingly, the Monetary Board issued Resolution No. 1317 on August 9, 2012 noting PDIC's initial report, and its request to extend the period within which to submit the final determination of whether or not EIB can be rehabilitated. Pursuant to the rehabilitation efforts, a public bidding was scheduled by PDIC on October 18, 2012, but the same failed as no bid was submitted. A re-bidding was then set on March 20, 2013 which also did not materialize as no bids were submitted.<sup>[12]</sup>

On April 1, 2013, PDIC informed BSP that EIB can hardly be rehabilitated.<sup>[13]</sup> Based on PDIC's report that EIB was insolvent, the Monetary Board passed Resolution No. 571 on April 4, 2013 directing PDIC to proceed with the liquidation of EIB.<sup>[14]</sup>

On April 29, 2013, petitioners, who are stockholders representing the majority stock of EIB,<sup>[15]</sup> filed a petition for *certiorari*<sup>[16]</sup> before the CA challenging Resolution No. 571. In essence, petitioners blame PDIC for the failure to rehabilitate EIB, contending that PDIC: (a) imposed unreasonable and oppressive conditions which delayed or frustrated the transaction between BDO and EIB; (b) frustrated EIB's efforts to increase its liquidity when PDIC disapproved EIB's proposal to sell its MRT bonds to a private third party and, instead, required EIB to sell the same to government entities; (c) imposed impossible and unnecessary bidding requirements; and (d) delayed the public bidding which dampened investors' interest.<sup>[17]</sup>

In defense, PDIC countered<sup>[18]</sup> that petitioners were already estopped from assailing the placement of EIB under receivership and its eventual liquidation since they had already surrendered full control of the bank to the BSP as early as April 26, 2012.<sup>[19]</sup> For its part, BSP maintained<sup>[20]</sup> that it had ample factual and legal bases to order EIB's liquidation.<sup>[21]</sup>

### **The CA Ruling**

In a Decision<sup>[22]</sup> dated January 21, 2014, the CA dismissed the petition for lack of merit. It ruled that the Monetary Board did not gravely abuse its discretion in

ordering the liquidation of EIB pursuant to the PDIC's findings that the rehabilitation of the bank is no longer feasible. In this regard, the CA held that there is nothing in Section 30 of RA 7653 that requires the Monetary Board to make its own independent factual determination on the bank's viability before ordering its liquidation. According to the CA, the law only provides that the Monetary Board "shall notify in writing the board of directors of its findings and direct the receiver to proceed with the liquidation of the institution,"<sup>[23]</sup> which it did in this case.

Undaunted, petitioners moved for reconsideration<sup>[24]</sup> which was, however, denied by the CA in its Resolution<sup>[25]</sup> dated October 10, 2014; hence, this petition.

### **The Issue Before the Court**

The sole issue before the Court is whether or not the CA correctly ruled that the Monetary Board did not gravely abuse its discretion in issuing Resolution No. 571 which directed the PDIC to proceed with the liquidation of EIB.

### **The Court's Ruling**

The petition is without merit.

Section 30 of RA 7653 provides for the proceedings in the receivership and liquidation of banks and quasi-banks, the pertinent portions of which read:

Section 30. *Proceedings in Receivership and Liquidation.* - Whenever, upon report of the head of the supervising or examining department, the Monetary Board finds that a bank or quasi-bank:

- (a) is unable to pay its liabilities as they become due in the ordinary course of business: *Provided*, That this shall not include inability to pay caused by extraordinary demands induced by financial panic in the banking community;
- (b) has insufficient realizable assets, as determined by the *Bangko Sentral*, to meet its liabilities; or
- (c) cannot continue in business without involving probable losses to its depositors or creditors; or
- (d) has willfully violated a cease and desist order under Section 37 that has become final, involving acts or transactions which amount to fraud or a dissipation of the assets of the institution; in which cases, **the Monetary Board may summarily and without need for prior hearing forbid the institution from doing business in the Philippines and designate the Philippine Deposit Insurance Corporation as receiver of the banking institution.**

x x x x

**The receiver shall immediately gather and take charge of all the assets and liabilities of the institution, administer the same for**