

FIRST DIVISION

[G.R. No. 199420, August 27, 2014]

**PHILNICO INDUSTRIAL CORPORATION, PETITIONER, VS.
PRIVATIZATION AND MANAGEMENT OFFICE, RESPONDENT.**

[G.R. NO. 199432]

**PRIVATIZATION AND MANAGEMENT OFFICE, PETITIONER, VS.
PHILNICO INDUSTRIAL CORPORATION, RESPONDENT.**

D E C I S I O N

LEONARDO-DE CASTRO, J.:

Before the Court are the consolidated Petitions for Review on *Certiorari* under Rule 45 of the Rules of Court involving the Decision^[1] dated January 31, 2011 and Resolution^[2] dated November 18, 2011 of the Court of Appeals in CA-G.R. SP. No. 111108, which affirmed the Order^[3] dated August 25, 2009 of the Regional Trial Court (RTC), Branch 64 of Makati City in Civil Case No. 03-114.

THE PARTIES

The Petition in G.R. No. 199420 was filed by Philnico Industrial Corporation (PIC). It is a corporation duly organized under the laws of the Philippines and which, together with Philnico Processing Corporation (PPC) and Pacific Nickel Philippines, Inc. (PNPI), form the Philnico Group. The Philnico Group is engaged in nickel mining and refining business. PIC and PNPI hold a Mineral Production Sharing Agreement over nickel mining areas in Nonoc and Dinagat Islands in Surigao, while PPC owns a nickel refinery complex also in Nonoc Island.^[4]

The Petition in G.R. No. 199432 was filed by the Privatization and Management Office (PMO), an attached agency of the Department of Finance. PMO succeeded the Asset Privatization Trust (APT), when the latter's life ended on December 31, 2000.^[5] The PMO serves as the marketing arm of the Government with respect to Transferred Assets, Government Corporations and other properties assigned to it by the Privatization Council (PrC) for disposition. Together, the mission of the PMO and PrC is to take title to and possession of, conserve, provisionally manage, and dispose of assets previously identified for privatization; and, in the process, reduce the Government's maintenance expense on non-performing assets, generating maximum cash recovery for the National Government.^[6]

ANTECEDENT FACTS

The Development Bank of the Philippines and Philippine National Bank, by virtue of foreclosure proceedings, became the holders of all the shares of stock in PPC (then

still the Nonoc Mining and Industrial Corporation). The banks eventually transferred their PPC shares of stock to PMO (then still the APT) in 1987.

On May 10, 1996, PMO, PIC (then still the Philnico Mining and Industrial Corporation), and PPC executed a contract, denominated as the Amended and Restated Definitive Agreement (ARDA), which laid down the terms and conditions of the purchase and acquisition by PIC from PMO of 22,500,000 shares of stock of PPC (representing 90% of ownership of PPC), as well as receivables of PMO from PPC. Under the ARDA, PIC agreed to pay PMO the peso equivalent of US\$333,762,000.00 as purchase price, payable in installments and in accordance with the schedule also set out in the ARDA.^[7]

Among the provisions of the ARDA relevant to the instant cases are Sections 2.04 and 2.07, which govern the rights and obligations of the parties as regards the PPC shares of stock, viz:

2.04 Security

- (a) As security for the payment of the Purchase Price in accordance with the terms of this Agreement, the Buyer shall pledge the Shares to the Seller and execute a pledge agreement (the "Pledge Agreement") in favor of the Seller in substantially the form of Annex A. The Buyer shall also pledge to the Seller the Converted Shares and the New Shares as security for the payment of the Purchase Price upon the issuance of such shares in the name of the Buyer.

x x x x

2.07 Closing

- (a) The closing of the sale and purchase of the Shares and the Tranche B Receivables under this Agreement shall take place on the Closing Date and at such place as may be agreed between the Buyer and the Seller upon the fulfillment of all of the conditions precedent specified in Sections 4.01 and 4.02 (unless any such condition precedent shall have been waived by the Buyer or the Seller, as the case may be). At the closing, the following transactions shall take place:
 - (1) the Seller shall execute and deliver to the Buyer the necessary deed of sale transferring to the Buyer all of the Seller's right, title and interest in and to the Shares and deliver to the Buyer the stock certificates representing such shares, each duly endorsed, or with separate stock transfer powers attached, in favor of the Buyer together with the duly executed resignations of the directors of the Company named in Schedule 6;
 - (2) the Company shall issue in the name of, and deliver to, the Buyer new stock certificates representing the Shares;
 - (3) the Buyer shall execute and deliver the Pledge Agreement covering the Shares and deliver to the Seller the stock certificates representing such shares;

x x x x

- (b) From and after the Closing Date, the Buyer shall exercise all the rights (including the right to vote) of a shareholder

in respect of the Shares (subject to the negative covenants contained in the Pledge Agreement).^[8]

Also worthy of note herein is Section 8 of the ARDA on default, which states:

SECTION 8. DEFAULT AND DEFAULT REMEDIES

8.01 Events of Default

Subject to any applicable curing period, each of the following events shall constitute an Event of Default hereunder:

- (a) The Buyer shall, subject to the provisions of Section 2.03(b), fail to pay any two consecutive installments on the Purchase Price in accordance with the terms of Section 2.03.
- (b) The Buyer shall fail to comply with or observe any other material term, obligation or covenant contained in this Agreement or in the Pledge Agreement.
- (c) The Buyer shall commit any act of bankruptcy or insolvency, or shall file any petition or action for relief under any bankruptcy, reorganization, insolvency or moratorium law or other law or laws for the relief of debtors.

8.02 Consequence of Default

At any time after the happening of an Event of Default, and provided that the same shall not have been remedied within ninety (90) days from receipt by the Buyer of written notice from the Seller, the Seller may declare the buyer in default and, as a consequence thereof, exercise such rights and remedies as it may have under this Agreement and applicable laws (including the cancellation of these Agreement); **provided that in case of default under Section 8.01(a), the title to the Existing Shares and the Converted Shares shall ipso facto revert to the Seller without need of demand in case such payment default is not remedied by the Buyer within ninety (90) days from the due date of the second installment.** (Emphasis supplied.)^[9]

In accordance with the ARDA, PMO executed and delivered to PIC the necessary documents to transfer the former's rights, title, and interests to and in the PPC shares of stock to the latter; and PPC issued new certificates for the same shares of stock in the name of PIC and/or its nominees.

On May 2, 1997, PIC and PNPI as pledgors and PMO as pledgee executed a Pledge Agreement^[10] which began with "Whereas Clauses" that read:

WHEREAS, [PIC] and the [PMO] have entered into an Amended and Restated Definitive Agreement, dated May 10, 1996, involving the purchase by the [PIC] from the [PMO] of 22,500,000 shares of common

stock of [PPC] and certain receivables of the [PMO] from said corporation; and

WHEREAS, to secure the obligation of [PIC] to pay the purchase price and all other amounts due the [PMO] under the aforesaid Definitive Agreement and the performance by [PIC] of its other obligations thereunder and under this Pledge Agreement, the [PIC and PNPI] have agreed to execute and deliver this Pledge Agreement, giving unto the [PMO] a good and valid pledge over the pledge[d] shares[.]^[11]

Sections 3.01 and 3.02 of the Pledge Agreement expressly acknowledged that PIC delivered its certificates of shares of stock in PPC and that PMO received said certificates.^[12] Section 5 of the same Agreement covered default and the available remedies in case thereof, thus:

SECTION [5]. DEFAULT REMEDIES, ETC.

5.01 Events of Default

The following shall be considered Events of Default under this Pledge Agreement:

- (a) [PIC] shall fail to pay when due the obligations after giving effect to any applicable period of grace; or
- (b) [PIC] or PNPI shall fail to comply with or observe any other material term, obligation or covenant contained in this Pledge Agreement or the Definitive Agreement; or
- (c) [PIC] or PNPI shall commit any act of bankruptcy or insolvency, or shall file any petition or action for relief under any bankruptcy, reorganization, insolvency or moratorium law or other x x x laws for the relief of debtors; or
- (d) The priority of the lien of or the security interest granted by this Pledge Agreement shall be impaired, or this Pledge Agreement shall cease to be a first and preferred lien upon the Pledged Shares.

5.02 Consequences of Default

If an Event of Default shall have occurred, then at any time thereafter, if any such event shall then be continuing after the applicable grace period, if any, the [PMO] is hereby authorized:

- (a) To sell in one or more sales, either public or private, at any time the whole or any part of the Pledged Shares in such order and number as the [PMO] may elect at its place of business or elsewhere and the [PMO] may, in all allowable cases, be the purchaser of any or all Pledged Shares so sold and hold the same thereafter in its own right free from any claim of [PIC] or any right of redemption;

(b) To issue receipts and to execute and deliver any instrument or document or do any act necessary for the transfer and assignment of all rights, title and interest of [PIC] in the Pledged Shares to the purchaser or purchasers thereof; and

(c) To apply, at the [PMO's] option, the proceeds of any said sale, as well as all sums received or collected by the [PMO] from or on account of such Pledged Shares to (i) the payment of expenses incurred or paid by the [PMO] in connection with any sale, transfer or delivery of the Pledged Shares and (ii) the payment of the Obligations or any part thereof.^[13]

In the meantime, the nickel refinery complex of PPC, which last operated in the 1980s, had become obsolete and much of the facilities therein were already scrap. The estimated cost in 2003 for building an entirely new refinery plant based on new technology was about US\$1 Billion. The Philnico Group, which had already invested at least US\$60 Million, was inviting and negotiating with prospective foreign investors who could assist in its business.

On account of the huge financial cost of building a new nickel refinery plant, coupled with the economic problems then affecting the Asia-Pacific Region, PMO, PIC, and PPC executed an Amendment Agreement^[14] on September 27, 1999 which provided for the restructuring of the payment terms of the entire obligation under the ARDA, the repayment of advances, the conditions for borrowings or financing, a new cash break-even formula, and the adoption of an investment plan.

Three years later, in a letter dated November 6, 2002, PMO notified PIC that the latter had defaulted in the payment of its obligations and demanded that PIC settle its unpaid amortizations in the total amount of US\$275,000.00 within 90 days, or on or about February 5, 2003, or else the PMO would enforce the automatic reversion of the PPC shares of stock under Section 8.02 of the ARDA. PIC replied in a letter dated January 7, 2003 requesting PMO to set aside its notice of default; to not rescind the sale of the PPC shares of stock; and to give PIC an opportunity to conclude its fund-raising efforts for its business, particularly with a group of investors from China. In another letter dated January 22, 2003 to PIC, PMO clearly indicated its intention to enforce Section 8.02 of the ARDA should PIC fail to settle its outstanding obligations after February 5, 2003.

On February 4, 2003, a day before the deadline for payment set by PMO in its letters, PIC filed before the RTC a Complaint for Prohibition against Reversion of Shares with Prayer for Writ of Preliminary Injunction and/or Temporary Restraining Order, Suspension of Payment and Fixing of Period of Payment, against PMO, PPC, and the PPC Corporate Secretary. On February 7, 2003, PIC filed an Amended Complaint raising, among other arguments, the need for mutual restitution in case the ARDA is rescinded by the RTC. Ultimately, PIC prayed of the RTC that:

(a) Upon the filing of this complaint, a temporary restraining order be issued under Sec. 5 of Rule 58 of [the] 1997 Rules of Civil Procedure prohibiting [PMO, PPC, and the PPC Corporate Secretary] from reverting the 22,500,000 shares covered by Stock Certificate Nos. 018, 022, 024,