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# FIRST DIVISION

## [ G.R. No. 190462, November 17, 2010 ]

### STEEL CORPORATION OF THE PHILIPPINES, PETITIONER, VS. EQUITABLE PCI BANK, INC., (NOW KNOWN AS BDO UNIBANK, INC.), RESPONDENT.

### [G.R. No. 190538]

### DEG - DEUTSCHE INVESTITIONS-UND ENTWICKLUNGSGESELLSCHAFT MBH, PETITIONER, VS. EQUITABLE PCI BANK, INC., (NOW KNOWN AS BDO UNIBANK, INC.) AND STEEL CORPORATION OF THE PHILIPPINES, RESPONDENTS.

### D E C I S I O N

**VELASCO JR., J.:**

Before us are two Petitions for Review on Certiorari under Rule 45, docketed as **G.R. Nos. 190462** and **190538**, assailing the July 3, 2008 Decision[1] and December 3, 2009 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 101881, entitled *Equitable PCI Bank, Inc. (now known as Banco de Oro-EPCI, Inc.) v. Steel Corporation of the Philippines*. The CA set aside the Decision[3] dated December 3, 2007 of the Regional Trial Court (RTC) acting as a Rehabilitation Court, and, in effect, the CA (1) set aside the Rehabilitation Court's Decision approving the Rehabilitation Plan; and (2) terminated the corporate rehabilitation of Steel Corporation of the Philippines (SCP).

We consolidated **G.R. No. 190462** with **G.R. No. 190538** as they involve identical parties, arose from the same facts, and assail the same CA Decision dated July 3, 2008.[4]

#### The Facts

SCP is a domestic corporation incorporated and registered with the Securities and Exchange Commission on October 3, 1994. It is engaged in the manufacturing and distribution of cold-rolled and galvanized steel sheets and coils.

During its operations, SCP encountered and suffered from financial difficulties and temporary illiquidity, aggravated by the 1997 Asian Financial Crisis. And shortage in working capital and reduced operating capacity compounded its problem. As a result, SCP was unable to service its principal payments for its liabilities.

In its Interim Financial Statement as of December 31, 2005, SCP's total assets amounted to PhP 10,996,551,123, while its liabilities amounted to PhP 8,365,079,864.

Accordingly, on September 11, 2006, Equitable PCI Bank, Inc., now known as Banco de Oro-EPCI, Inc. (BDO-EPCIB), which accounted for 27.45% of the total liabilities of SCP, filed a creditor-initiated petition--to place the SCP under corporate rehabilitation pursuant to the provisions of Section 1, Rule 4 of the Interim Rules of Procedure on Corporate Rehabilitation--entitled *In the Matter of the Petition to have Steel Corporation of the Philippines Placed under Corporate Rehabilitation with Prayer for the Approval of the Proposed Rehabilitation Plan*. BDO-EPCIB included its proposed rehabilitation plan in the said petition.

Finding the petition to be sufficient in form and substance, the Rehabilitation Court issued an Order dated September 12, 2006, directing, among others, the stay of enforcement of all claims, whether for money or otherwise and whether such enforcement is by court action or otherwise, against SCP, its guarantors, and sureties not solidarily liable with it. The Rehabilitation Court likewise appointed Atty. Santiago T. Gabionza, Jr. as the Rehabilitation Receiver for SCP.

SCP did not oppose the petition but instead filed its own counter rehabilitation plan and submitted it for the consideration of the Rehabilitation Court. Other creditors filed their respective comments on the petition.

On November 23, 2006, the Rehabilitation Court issued an Order, giving due course to the petition and directing Atty. Gabionza to evaluate the rehabilitation plan proposed by BDO-EPCIB and the proposals of the other participating creditors, and to submit his recommendations. The Rehabilitation Court also directed Atty. Gabionza to consider SCP's counter rehabilitation plan in drafting his recommended rehabilitation plan.

In a Compliance dated March 6, 2007, Atty. Gabionza submitted his recommended rehabilitation plan. The said plan contained the salient features of the rehabilitation plans separately submitted by SCP and BDO-EPCIB, as well as his own comments. The plan was summarized by the Rehabilitation Court as follows:

> Thus, after considering the comments of the other participating creditors and evaluating the proposals of SCP and the petitioner, Atty. Gabionza recommended the following terms and conditions for rehabilitation plan, to wit:
>
> 1. Fresh equity infusion of P3.5 Billion, out of which P3 Billion shall be used for debt reduction, and the balance of P500 Million as additional working capital.
>
> 2. The P3 Billion allocated for debt repayment shall first service the secured credits and excess thereafter will be applied to clean creditors and suppliers.
>
> 3. The remaining short term and long term debt balances after debt reduction will be restructured over a period of 12 years inclusive of a 2 year grace period on principal payments. There shall be 20 equal semi-annual payments of principal to commence at the end of

the grace period.

4. Interest rates for the restructure debt shall be 8% per annum fixed for the duration of the loan and shall be payable quarterly in arrears. No grace period on interest payments.

5. To protect existing clean creditors, SCP may not secure additional secured credits which will utilize the excess assets values after the P3.0 Billion debt reduction.

6. Any excess cash after the annual (normal) CAPEX and debt service requirements shall be distributed as follows: 70% debt repayment and 30% to be retained by the Company.

7. All existing suppliers credits (subject to final validation) shall have 2 options:

   a. To be paid quarterly over a period of 5 years without interest, or
   b. To continuously supply the company on the pay-re-avail (Deliver same amount paid) basis.

8. All loans, supplier's credit and other SCP liabilities are subject to final verification once the recommended rehabilitation plan is approved.

The rehabilitation plan recommended by Atty. Gabionza has three (3) phases in the implementation of the proposed P3.5 Billion fresh equity infusion, thus:

> Phase 1
>
> SCP's articles of incorporation and by laws shall be amended to accommodate the additional equity of P3.5 Billion. The present stockholders of SCP shall be given sixty (60) days from approval of the plan to keep their stockholdings SCP by raising/sourcing the P3.5 Billion fresh equity required.
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> Phase 2
>
> In the event the present stockholders fail to raise the P3.5 Billion fresh equity needed to keep their stockholdings and save their company, Atty. Gabionza shall offer to acceptable investors, through negotiated sale or bidding, 67% of SCP for the P3.5 Billion fresh equity required.
>
> Phase 3
>
> Should Phase 1 and 2 fail, there shall be a debt to equity conversion in the required amount of P3.5 Billion.[5]

Although not required by the rules, several consultative meetings were thereafter conducted by the Rehabilitation Court between and among the parties to discuss a viable rehabilitation plan for SCP that is acceptable to all.

In compliance with the directives of the Rehabilitation Court to consider all the inputs and observations made by the parties during the consultative meetings and to make the necessary modification in his recommendations on the submitted rehabilitation plans, Atty. Gabionza submitted a Modified Rehabilitation Plan as incorporated in his compliance dated June 27, 2007. The modifications made were:

> Phase 1 of the Recommended Rehabilitation Plan is retained under the Modified Rehabilitation Plan. Phase 2, however, is amended to the effect that in the event the present stockholders fail to raise the P3.5 Billion fresh equity needed to keep their stockholdings and save their company, the same existing stockholders of SCP shall be afforded a period of 60 days from the expiration of the period provided in Phase 1 to offer for sale to an acceptable investor at least 67% stockholdings in SCP for an amount not less than P3.5 Billion.
>
> Under Phase 3 thereof, there shall be a debt to equity conversion in the required amount of P3.5 Billion should Phase 1 and 2 fail. The adjusted book value of SCP under its 2005 Audited Financial Statements is pegged at P1.129 Billion. Accordingly, P1.1.29 Billion of the existing debt will initially be converted into common shares achieving an ownership structure where both existing stockholders and the bank creditors will equally own SCP at 50% each. The balance of P2.371 Billion will then be converted into non-interest bearing convertible notes.[6]

On June 21, 2007, BDO-EPCIB, joined by creditors DEG, Planters Development Bank, China Banking Corporation, Asiatrust Development Bank and GE Money Bank, Inc., altogether holding more than 50% of SCP's total liabilities, filed their Joint Manifestation and Motion declaring their conformity with and support to Atty. Gabionza's Recommended Rehabilitation Plan.

On July 30, 2007, SCP submitted its 2006 Audited Financial Statements in a Compliance with Motion. Atty. Gabionza was ordered by the Rehabilitation Court to study the financial statements and to submit a report on their effects on the Modified Rehabilitation Plan.

The parties then submitted their respective comments on the Modified Rehabilitation Plan and Atty. Gabionza's report on the effects of the 2006 Audited Financial Statements. Likewise, SCP submitted its Updated Counter Rehabilitation Plan, attached to its Ad Abundante Cautelam Motion to Admit Debtor SCP's Updated Counter Rehabilitation Plan, which was subsequently admitted by the Rehabilitation Court.

On December 3, 2007, the RTC promulgated a Decision approving the Modified Rehabilitation Plan. The dispositive portion reads:

> **WHEREFORE**, premises considered, the present petition is given due course. The parties are mandated to comply strictly with the provisions of the approved rehabilitation plan.
>
> The Rehabilitation Receiver is hereby directed to provide this Court with periodic reports on the implementation of the approved Rehabilitation Plan.
>
> The provisions of the approved Rehabilitation Plan shall be binding on all persons and parties affected by it, whether or not such persons or parties have participated in the present proceedings.
>
> The concerned parties are further directed to submit to this Court their respective nominees for the Management Committee not later than 60 days before the expiration of the period for the application of Phases 1 and 2 of the foregoing rehabilitation plan. In case no nominee is submitted by any party, this Court shall directly designate the corresponding members thereof.
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> SO ORDERED.[7]

Therefrom, several creditors went to the CA via separate Petitions for Review on Certiorari, to wit: (1) SCP's petition dated January 9, 2008, docketed as CA-G.R. SP No. 101732 and entitled *Steel Corporation of the Philippines v. Equitable PCI Bank, Inc.*; (2) DEG's petition dated January 6, 2008, docketed as CA-G.R. SP No. 101880 and entitled *DEG - Deutsche Investitions-und Entwicklungsgesselschaft mbH v. Steel Corporation of the Philippines*; (3) BDO-EPCIB's petition dated January 8, 2008, docketed as CA-G.R. SP No. 101881 and entitled *Equitable PCI Bank, Inc. v. Steel Corporation of the Philippines*; and (4) Investments 2234 Philippines Fund I, Inc.'s (IPFI's) petition dated January 10, 2008, docketed as CA-G.R. SP No. 101913 and entitled *Investments 2234 Philippines Fund I (SPV-AMC), Inc. v. Equitable PCI Bank, Inc*.

The petitions of SCP and IPFI were eventually consolidated under CA-G.R. SP No. 101732. However, the CA denied BDO-EPCIB's motion to consolidate with CA-G.R. SP No. 101732.[8] As to CA-G.R. SP No. 101881, the Court takes judicial notice of the fact that it has also been consolidated with CA-G.R. SP No. 101732 in a Resolution issued by the CA dated March 22, 2010.

On July 3, 2008, the CA issued the assailed decision in CA-G.R. SP No. 101881, ordering the termination of the rehabilitation proceedings. The dispositive portion reads:

> **WHEREFORE,** premises considered, the Decision dated December 3, 2007 of the RTC, Branch II, Batangas City, in SP No. 06-7993 is hereby **SET ASIDE**, and another one is hereby entered declaring the rehabilitation proceedings **TERMINATED**, pursuant to *Section 27, Rule 4 of the Interim Rules of Procedure on Corporate Rehabilitation.*
>
> **SO ORDERED**.[9]