

SECOND DIVISION

[G.R. No. 104102, August 07, 1996]

**CENTRAL TEXTILE MILLS, INC., PETITIONER, VS. NATIONAL
WAGES AND PRODUCTIVITY COMMISSION, REGIONAL
TRIPARTITE WAGES AND PRODUCTIVITY BOARD - NATIONAL
CAPITAL REGION, AND UNITED CMC TEXTILE WORKERS UNION,
RESPONDENTS.**

D E C I S I O N

ROMERO, J.:

On December 20, 1990, respondent Regional Tripartite Wages and Productivity Board - National Capital Region (the Board) issued Wage Order No. NCR-02 (WO No. NCR-02), which took effect on January 9, 1991. Said wage order mandated a P12.00 increase in the minimum daily wage of all employees and workers in the private sector in the NCR, but exempted from its application distressed employers whose capital has been impaired by at least twenty-five percent (25%) in the preceding year.

The "Guidelines on Exemption from Compliance With the Prescribed Wage/Cost of Living Allowance Increase Granted by the Regional Tripartite Wage and Productivity Boards," issued on February 25, 1991, defined "capital" as the "paid-up capital at the end of the last full accounting period (in case of corporations)." Under said guidelines, "(a)n applicant firm may be granted exemption from payment of the prescribed increase in wage/cost-of-living allowance for a period not to exceed one (1) year from effectivity of the Order x x x when accumulated losses at the end of the period under review have impaired by at least 25 percent the paid-up capital at the end of the last full accounting period preceding the application."

By virtue of these provisions, petitioner filed on April 11, 1991 its application for exemption from compliance with WO No. NCR-02 due to financial losses.

In an order dated October 22, 1991, the Board's Vice-Chairman, Ernesto Gorospe, disapproved petitioner's application for exemption after concluding from the documents submitted that petitioner sustained an impairment of only 22.41%.

On February 4, 1992, petitioner's motion for reconsideration was dismissed by the Board for lack of merit. The Board, except for Vice-Chairman Gorospe who took no part in resolving the said motion for reconsideration, opined that according to the audited financial statements submitted by petitioner to them, to the Securities and Exchange Commission and to the Bureau of Internal Revenue, petitioner had a total paid-up capital of P305,767,900.00 as of December 31, 1990, which amount should be the basis for determining the capital impairment of petitioner, instead of the authorized capital stock of P128,000,000.00 which it insists should be the basis of computation.

The Board also noted that petitioner did not file with the SEC the August 15, 1990 resolution of its Board of Directors, concurred in by its stockholders representing at least two-thirds of its outstanding capital stock, approving an increase in petitioner's authorized capital stock from P128,000,000.00 to P640,000,000.00. Neither did it file any petition to amend its Articles of Incorporation brought about by such increase in its capitalization.

Petitioner maintains in the instant action that its authorized capital stock, not its unauthorized paid-up capital, should be used in arriving at its capital impairment for 1990. Citing two SEC Opinions dated August 10, 1971, and July 28, 1978, interpreting Section 38 of the Corporation Code, it claims that "the capital stock of a corporation stand(s) increased or decreased only from and after approval and the issuance of the certificate of filing of increase of capital stock."

We agree.

The guidelines on exemption specifically refer to paid-up capital, not authorized capital stock, as the basis of capital impairment for exemption from WO. No. NCR-02. The records reveal, however, that petitioner included in its total paid-up capital payments on advance subscriptions, although the proposed increase in its capitalization had not yet been approved by, let alone presented for the approval of, the SEC. As observed by the Board in its order of February 4, 1992, "the aforementioned (r)esolution (of August 15, 1990) has not been filed by the corporation with the SEC, nor was a petition to amend its Articles of Incorporation by reason of the increase in its capitalization filed by the same."

It is undisputed that petitioner incurred a net loss of P68,844,222.49 in 1990, and its authorized capital stock as of that time stood at P128,000,000.00.^[1] On August 15, 1990, a Board resolution increasing the capital stock of the corporation was affirmed by the requisite number of stockholders. Although no petition to that effect was ever submitted to the SEC for its approval, petitioner already started receiving subscriptions and payments on the proposed increase, which it allegedly held conditionally, that is, pending approval of the same by the SEC. In its Memorandum, however, petitioner admitted, without giving any reason therefor, that it indeed "received 'subscriptions' and 'payments' to the said proposed increase in capital stock, even in the absence of SEC approval of the increase as required by the Corporation Code."^[2] Thus, by the end of 1990, the corporation had a subscribed capital stock of P482,748,900.00 and, after deducting P176,981,000.00 in subscriptions receivables, a total paid-up capital of P305,767,900.00.^[3] P177,767,900.00 of this sum constituted the unauthorized increase in its subscribed capital stock, which are actually payments on future issues of shares.

These payments cannot as yet be deemed part of petitioner's paid-up capital, technically speaking, because its capital stock has not yet been legally increased. Thus, its authorized capital stock in the year when exemption from WO No. NCR-02 was sought stood at P128,000,000.00, which was impaired by losses of nearly 50%. Such payments constitute deposits on future subscriptions, money which the corporation will hold in trust for the subscribers until it files a petition to increase its capitalization and a certificate of filing of increase of capital stock is approved and issued by the SEC.^[4] As a trust fund, this money is still withdrawable by any of the