



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

CHINA
CORPORATION,

BANKING

G.R. Nos. 232600-04

Petitioner,

Present:

-versus-

LEONEN, SAJ,
Chairperson,
LAZARO-JAVIER,
LOPEZ, M.
LOPEZ, J. *and*
KHO, JR., JJ.

ST. FRANCIS SQUARE REALTY
CORPORATION, ST. FRANCIS
SQUARE DEVELOPMENT
CORPORATION and
SECURITIES AND EXCHANGE
COMMISSION,

Promulgated:

JUL 27 2022

Respondents.

X-----X

DECISION

LAZARO-JAVIER, J.:

This Petition for Review on *Certiorari* assails the following dispositions of the Court of Appeals in CA-G.R. SP Nos. 145290, 145586, 145610, 146157 & 146331:

- 1) Decision¹ dated April 7, 2017, which prohibited petitioner from charging interest and penalties on outstanding loans beginning May 4, 2000, and reversed the Decision dated April 27, 2016 in SEC *En Banc* Case No. 04-14-325 and Decision dated April 27, 2016 in SEC *En Banc* Case No. 01-15-352 of the Securities and Exchange Commission (SEC); and
- 2) Resolution² dated July 6, 2017, which denied petitioner's motion for reconsideration.

Antecedents

Respondent **St. Francis Square Realty Corporation (SFSRC)** – formerly ASB Realty Corporation – has outstanding loans with petitioner **China Banking Corporation (Chinabank)** totaling ₱300,000,000.00, with the following properties as security:

- (a) Condominium project known as The Legaspi Place located at Salcedo St., Legaspi Village, Makati City;
- (b) House and lot at No. 34 Constellation St., Bel-Air 2 Village, Makati City; and
- (c) Building and lot on 7th Avenue, Caloocan City.³

Having been badly affected by the Asian financial crisis in the late 90s, the ASB Group of Companies, which included respondent SFSRC, initiated rehabilitation proceedings before the **Securities and Exchange Commission (SEC)** on **May 2, 2000**. Consequently, *Stay Orders* were issued until the rehabilitation plan was eventually approved. On April 26, 2001, SEC appointed a rehabilitation receiver.⁴

CA-G.R. SP No. 145290

Proceedings Before the Special Hearing Panel 2 (SHP 2)

By reason of the *Stay Order dated May 4, 2000*, SFSRC filed with Special Hearing Panel 2 (SHP 2) motions to enjoin Chinabank from “charging, accruing and/or collecting interests, penalties and other charges” on its loans.⁵

¹ Penned by Associate Justice Stephen C. Cruz and concurred in by Associate Justices Florito S. Macalino and Maria Elisa Sempio-Diy, *rollo*, Vol. I, pp. 9–46.

² *Id.* at 48–52.

³ *Id.* at 281.

⁴ *Id.*

⁵ *Id.*

On October 2, 2012, SHP 2 directed Chinabank to submit the following information:

1. Particulars of the Three Hundred Million Pesos (₱300,000,000.00) Current Outstanding Balance of China Bank as indicated in the ASB Group of Companies Rehabilitation Plan; and
2. Particulars (including the covered period) of and legal basis for the **Two Hundred Million Pesos (₱200,000,000.00) to Three Hundred Million Pesos (₱300,000,000.00) interest** being charged by (Chinabank) as indicated by SFSRC in the Motion and Amended Motion.⁶ (Emphasis supplied)

Chinabank asserted that SFSRC and ASB Development Corporation, now respondent **St. Francis Square Development Corporation (SFSDC)**, did not pay interests on their loans **beginning May 2000**. It added that it had earlier signified its willingness to accept ₱200,000,000.00 as compromise interest on both loans.⁷

Respondent SFSRC argued that under Presidential Decree (P.D.) No. 902-A,⁸ **all claims against the company were deemed suspended** as soon as a rehabilitation receiver got appointed. Also, by virtue of the *Stay Order*, SFSRC was **enjoined from making payments on its loans** except in connection with its regular day-to-day business. Necessarily, it was **also prohibited from paying interest on its loans**.⁹

Chinabank, however, insisted that its continued imposition of interest was in accord with the ASB Rehabilitation Plan and beyond the *Stay Order* coverage.¹⁰

By Order¹¹ **dated February 28, 2013** (SEC Case No. 05-00-6609), SHP 2 held that SFSRC **should not be charged interest on its loans other than those indicated in Appendix J** of the rehabilitation plan, thus:

While it is true that the Supreme Court mentions that the creditors will have an option, the Supreme Court was referring to (a) *dacion en pago* transactions; or (b) settling the obligations (**without interest, penalties, and other related charges accruing after the date of the initial suspension order**) to secured creditors with mortgaged properties at ASB selling prices x x x

X X X X

⁶ *Id.* at 282.

⁷ *Id.* at 282–283.

⁸ Reorganization of the Securities and Exchange Commission with Additional Powers and Placing the Said Agency under the Administrative Supervision of the Office of the President, Presidential Decree No. 902-A, March 11, 1976.

⁹ *Rollo*, Vol. I, p. 283.

¹⁰ *Id.*

¹¹ *Id.* at 281–290.

We hold that SFSRC should not be charged interest in relation to the subject loan other than as indicated in Appendix J of the Rehabilitation Plan.¹² (Emphasis supplied)

SHP 2 further explained that Chinabank's claim went against the purpose of a rehabilitation proceeding, *viz.*:

As previously mentioned the Rehabilitation Plan refers to the **release of the Legaspi Place**, which is currently mortgaged to China Bank. Its **release and eventual completion is essential for a successful rehabilitation** of the ASB Group of Companies. The ASB Group of Companies is mandated to **complete unfinished condominium projects**. As earlier mentioned, the **net realizable value of Legaspi Place is P1,059,638,783.00 (as of 2000)**. To date, the ASB Group of Companies has an unsecured debt amounting to around Three Billion Pesos (P3,000,000,000.00). It is **reasonable to assume that with the increase in property values** (particularly in the Makati Central Business District area), the **current value of Legaspi Place could very well service to a substantial extent, the settlement of debts** of the ASB Group of Companies.

In consonance with the purpose and objective of rehabilitation proceedings, we deem it equitable to **enjoin China Bank from charging, accruing, and/or collecting interests, penalties and other charges on the loans of SFSRC after the issuance of the Stay Order on 4 May 2000**.

WHEREFORE, the Amended Manifestation & Motion dated 5 September 2012 filed by St. Francis Square Realty Corporation (formerly known as ASB Realty Corporation) is hereby **GRANTED**.

The Rehabilitation Receiver is directed to provide copies of this Order to the parties concerned and file a compliance with the Panel within five (5) days from receipt hereof.

SO ORDERED.¹³ (Emphasis supplied)

Proceedings before the SEC *En Banc*

On Chinabank's Petition for Review on *Certiorari* in SEC *En Banc* Case No. 03-13-286, SEC *En Banc* **affirmed by Decision¹⁴ dated February 23, 2016**.

Chinabank's Motion for Reconsideration dated March 15, 2016 was denied under Resolution dated April 5, 2016 for being a prohibited pleading.¹⁵

CA-G.R. SP Nos. 146157 and 145586

¹² *Id.* at 284–285.

¹³ *Id.* at 289.

¹⁴ *Id.* at 291–297.

¹⁵ *Id.* at 20.



Proceedings Before the SHP 2

On September 13, 2013, SFSRC and SFSDC filed an Omnibus Motion which essentially alleged that the **valuations of the mortgaged properties had increased** based on the appraisal report of Cuervo Appraisers, Inc. (CAI), *viz.*:

- (a) Legaspi property – ₱1,086,102,000.00;
- (b) Bel-Air property – ₱46,462,000.00; and
- (c) Caloocan property – ₱82,031,000.00.¹⁶

Considering the **increase in the valuations of the mortgaged properties**, respondents claim that their loans to Chinabank were already **“over-collateralized,”** thus, the **Bel-Air and Caloocan properties should be immediately released.** The **Bel-Air and Caloocan properties should be sold to pay off their loans.** Chinabank should also **release the mortgage on the Legaspi property and allow respondents to complete its construction.** Once the construction of the Legaspi property is completed, they will **set aside units**, on the basis of prevailing market value, as **settlement for the remaining balance of their loans to Chinabank.**¹⁷

On October 3, 2013, the rehabilitation receiver opined that **Chinabank’s secured status will not be diminished** considering that the **cash generated from the sale of both the Bel-Air and Caloocan properties**, with the combined value of ₱128,491,000.00, will be **applied to the Chinabank loans.** Further, the **completion of the Legaspi property will fully settle the unpaid balance** upon allocation of the units based on market valuation.¹⁸

By **Order dated March 25, 2014** (SEC Case No. 05-00-6609), SHP 2 granted the Omnibus Motion, thus:

WHEREFORE, premises considered, the hearing panel hereby resolves as follows:

1. Declaring the petitioners’ loans with Chinabank to be over-collateralized. Hence, **Chinabank is hereby directed to release to petitioners the titles over the mortgaged Bel-Air and Caloocan properties and to cancel/release the corresponding mortgage** on said properties. Petitioners are hereby **authorized to sell the same via public bidding** within 180 days from date hereof. Accordingly, the Rehabilitation Receiver is directed to promulgate appropriate bidding rules and procedure, seeing to it that the value of the properties are maximized and the **sale awarded to the highest bidder.**

¹⁶ *Id.* at 376.

¹⁷ *Id.* at 376–377.

¹⁸ *Id.* at 377.

2. Directing **Chinabank to accept the proceeds of such sale, net of taxes and expenses**, and to credit the same as partial payment for the Php300,000,000.00 Million loan **(with no interest and charges whatsoever)** of the Petitioners.
3. Chinabank is further **directed to cancel/release the mortgage on The Legaspi Place**, as well as **to release the title/s thereon to petitioners**. Petitioners are **directed to resume construction thereat within one (1) year from release of mortgage and turn-over of said title/s to Petitioners**. Thereafter, **Petitioners shall allocate for Chinabank as a security, such number of units at The Legaspi Place as are sufficient to pay-off such loan balance** based on current market value of the units. Furthermore, Petitioners are **directed to pay the remaining unpaid balance to Chinabank on cash basis, (with no interest or charges whatsoever)** from the proceeds of the sale of units at The Legaspi Place within one (1) year from completion of said project.

SO ORDERED.¹⁹

Ruling of the SEC *En Banc*

On Chinabank's Petition for Review on Certiorari in SEC *En Banc* Case No. 04-14-325, SEC *En Banc* **partially reversed** under its ***Decision***²⁰ **dated April 27, 2016**.

First, the Financial Rehabilitation and Insolvency Act (FRIA) of 2010 is not applicable to the case for it is neither advantageous nor feasible insofar as respondents' rehabilitation is concerned;²¹

Second, the 1999 SEC Rules of Procedure on Corporate Recovery, therefore, is inapplicable, considering the rehabilitation proceedings started in 2000;²²

Third, respondents merely followed the **ASB Rehabilitation Plan** providing that "if the 1st option (*Dacion en Pago* offer) is rejected by a secured creditor, the **next alternative** for said creditor is the **2nd option (settlement of obligation/claims)**";²³

Fourth, the SHP 2 **correctly relied** on CAI's valuations of the Bel-Air and Caloocan properties and, thus, had **substantial basis to declare respondents' loans to be "over-collateralized."** As a result, the **release and eventual sale** within 180 days of the Caloocan property, valued at ₱82,031,000.00, was **valid** since it was more than enough to cover respondent SFSDC's loan of ₱35,000,000.00 to petitioner Chinabank;²⁴

¹⁹ *Id.* at 17–18.

²⁰ *Id.* at 375–388.

²¹ *Id.* at 383.

²² *Id.* at 382.

²³ *Id.* at 383.

²⁴ *Id.* 384.

Fifth, as for the **Bel-Air property**, valued at ₱46,462,000.00, it served as partial security for respondent SFSRC's loan of ₱265,000,000.00 with Chinabank, and as such, can be validly **released and then sold** within 180 days to partly pay for the said loan;²⁵

Sixth, the **Legaspi Place property**, valued at ₱1,086,102,000.00, also served as partial security for the same loan, thus, this property should not have been released by SHP 2 but **should have been transferred to the assets pool**, for the **benefit of other creditors**, per rehabilitation plan;²⁶

Seventh, the release of the Legaspi Place property **will diminish** Chinabank's status as a secured creditor.²⁷

Thus:

WHEREFORE, premises considered, the instant petition is **PARTIALLY GRANTED**. The paragraphs 1 and 2 of Special Hearing Panel 2's Order dated 25 March 2014:

1. Declaring the petitioner's loans with Chinabank to be over-collateralized. Hence, Chinabank is hereby **directed to release to petitioners the titles over the mortgaged Bel-Air and Caloocan properties and to cancel/release the corresponding mortgage on said properties**. Petitioners are hereby authorized to **sell the same via public bidding** within 180 days from the date hereof. Accordingly, the Rehabilitation Receiver is directed to promulgate appropriate bidding rules and procedure, seeing to it that the value of the properties are maximized and the sale awarded to the highest bidder.
2. Directing **Chinabank to accept the proceeds of such sale**, net of taxes and expenses, and to credit the same as partial payment for the Php300,000,000.00 Million loan (**with no interest and charges whatsoever**) of the Petitioners.

are hereby **AFFIRMED** with **MODIFICATIONS**, to wit:

1. That the Chinabank is **directed to release the titles of the Bel-Air and Caloocan properties** to the Rehabilitation Receiver;
2. That the **public bidding** shall be conducted by the Rehabilitation Receiver;
3. That the **cancellation of the mortgage over the Bel-Air and Caloocan properties shall only be done after a successful sale and payment by a buyer** of the said properties;
4. That **SFSRC and SFSDC shall execute an undertaking** that in case the 180-day period expires **with no successful public bidding**, **that the Rehabilitation Receiver shall return/turnover the titles of the mortgage properties to Chinabank**, without need of demand.

²⁵ *Id.* at 385.

²⁶ *Id.* at 385.

²⁷ *Id.* at 381–387.

Paragraph 3 wherein –

3. Chinabank is *further directed to cancel/release the mortgage on The Legaspi Place, as well as to release the title/s thereon to petitioners. Petitioners are directed to resume construction thereat within one (1) year from release of mortgage and turn-over of said title/s to Petitioners. Thereafter, Petitioners shall allocate for Chinabank as a security, such number of units at The Legaspi Place as are sufficient to pay-off such loan balance based on current market value of the units. Furthermore, Petitioners are directed to pay the remaining unpaid balance to Chinabank on cash basis, (with no interest or charges whatsoever) from the proceeds of the sale of units at The Legaspi Place within one (1) year from completion of the said project.*

is hereby **REVERSED and SET ASIDE**.

The settlement of SFSRC's outstanding obligation with Chinabank is hereby **REMANDED** to the SHP2. The SHP2 and the parties are further directed to **adhere to the provisions of the ASB Rehabilitation Plan in the disposition of the Legaspi property.**

SO ORDERED (Emphasis supplied).²⁸

Chinabank sought a partial reconsideration which the SEC denied under Resolution dated May 17, 2016 for being a prohibited pleading.²⁹

CA G.R. SP Nos. 145610 and 146331

Proceedings Before the SHP 2

On April 25, 2014, while Chinabank's Petition for Review in SEC *En Banc* Case No. 04-14-325 was pending, respondents filed with the SHP 2 a motion for the **issuance of a writ of execution** of the SHP 2's **Order dated March 25, 2014**. Consequently, by **Order dated October 28, 2014**, SHP issued the writ of execution prayed for. Although Sheriff Rommel Ignacio (Sheriff Ignacio) had personally served the writ on Chinabank through its president Ricardo Chua, the bank asked for time to comply.³⁰

On November 18, 2014, respondents filed with the SHP 2 a motion to cite Chinabank in indirect contempt as it later on allegedly turned out that the Bank did not really intend to comply with the SHP 2 **Order dated March 25, 2014** as shown by the fact that it had elevated the matter to the Court of Appeals for injunctive relief.³¹

²⁸ *Id.* at 387–388.

²⁹ *Id.* at 21.

³⁰ *Id.* at 508.

³¹ *Id.* at 509.

By **Order**³² dated **December 22, 2014** in SEC Case No. 05-00-6609, SHP 2 did not cite petitioner Chinabank in indirect contempt but issued the following directive:

WHEREFORE, premises considered, the Hearing Panel hereby resolves the Motion dated 18 November 2014 as follows:

1. Taking note of the Sheriff's Return dated 11 December 2014 prepared and submitted by Mr. Rommel M. Ignacio, Sheriff IV of the Regional Trial Court of Makati City;
2. Designating said Sheriff Ignacio, as he is hereby designated pursuant to Section 10, Rule 39 of the Revised Rules of Court, **to execute the necessary Deeds of Cancellation of Mortgage in accordance with the Writ of Execution dated October 28, 2014** issued in relation to the Order dated 25 March 2014;
3. Ordering the Register of Deeds of Makati City and the Register of Deeds of Caloocan City, as the case may be, as follows:
 - 3.1 **To register the aforesaid Deeds of Cancellation of Mortgage** on TCT Nos. 206189, 201933, 205136, 298110 and 298109;
 - 3.2 **To cancel or revoke, or to consider as cancelled or revoked the Owner's Duplicate Copies** of TCT Nos. 206189, 201933, 205136, 298110, and 298109 which are in the possession or custody of China Banking Corporation;
 - 3.3 **To issue new Owner's Duplicate Copies** of TCT Nos. 206189, 201933, and 205136 **to and in the name of St. Francis Square Realty Corporation (formerly ASB Realty Corporation)** all free from any liens and encumbrances.
 - 3.4 To issue Owner's Duplicate Copies of TCT Nos. 298110 and 298109 to and in the name of St. Francis Square Development Corporation (formerly Tiffany Tower realty Corporation), all free from any liens and encumbrances.

SO ORDERED (Emphasis supplied).³³

Ruling of the SEC *En Banc*

On Chinabank's Petition for Review on *Certiorari* in SEC *En Banc* Case No. 01-15-352), SEC modified per **Decision**³⁴ dated **April 27, 2016**. It ruled that the **SHP 2 did not commit grave abuse of discretion when it caused the execution of its Order dated March 25, 2014** since there was no injunctive writ issued by the SEC against such execution. Even then, since this Order was not a judicial command, SHP 2 erred in designating Sheriff

³² *Id.* at 502–505.

³³ *Id.* at 505.

³⁴ *Id.* at 506–513.

Ignacio to cause its implementation. For under Resolution No. 586, Series of 2015, the SEC had already designated Anthony Glenn Paggao as special sheriff to implement the orders of the SEC, its operating departments and special offices. Lastly, SHP 2 should have modified its disposition in accordance with the ruling in SEC *En Banc* Case No. 04-14-325,³⁵ thus:

WHEREFORE, premises considered, the instant petition is hereby **MODIFIED**. Paragraph 1 of the Special Hearing Panel 2's Order dated 22 December 2014:

‘1. Taking note of the Sheriff's Return dated 11 December 2014 prepared and submitted by Mr. Rommel M. Ignacio, Sheriff IV of the Regional Trial Court of Makati City;’

is hereby **AFFIRMED**.

Paragraph 2 wherein –

‘2. Designating said Sheriff Ignacio, as he is hereby designated pursuant to Section 10, Rule 39 of the Revised Rules of Court, to execute the necessary Deeds of Cancellation of Mortgage in accordance with the Writ of Execution dated October 28, 2014 issued in relation to the Order dated 25 March 2014;’

is hereby **REVERSED and SET ASIDE**. The Commission hereby designates Mr. Anthony Glenn C. Paggao as a Special Sheriff to implement SHP2's orders relating to the instant case.

Paragraph 3 wherein -

‘3. Ordering the Register of Deeds of Makati City and the Register of Deeds of Caloocan City, as the case may be, as follows:

1.1 To register the aforesaid Deeds of Cancellation of Mortgage on TCT No. 206189, 201933, 205136, 298110 and 298109;

1.2 To cancel or revoke, or to consider as cancelled or revoked, the Owner's Duplicate Copies of TCT Nos. 206189, 201933, 205136, 298110 and 298109 which are in the possession or custody of China Banking Corporation;

1.3 To issue new Owner's Duplicate Copies of TCT Nos. 206189, 201933 and 205136 to and in the name of St. Francis Square Realty Corporation (formerly ASB Realty Corporation) all free from any liens and encumbrances; and

1.4 To issue Owner's Duplicate Copies of TCT Nos. 298110 and 298109 to and in the name of St. Francis Square Development Corporation (formerly Tiffany

³⁵ *Id.* at 511.



Tower realty Corporation), all free from any liens and encumbrances.’

is hereby **REVERSED and SET ASIDE**. This is hereby REMANDED to SHP2 to issue an Order that conforms with the Commission En Banc’s Decision in SEC En Banc Case No. 04-14-325.

SO ORDERED.³⁶

Proceedings before the Court of Appeals

Aggrieved, **Chinabank** initiated the following **Petitions for Certiorari** under Rule 65:

1. **CA-G.R. SP No. 145290**, which sought to nullify the *Decision* dated **February 23, 2016** in SEC *En Banc* Case No. 03-13-286 **enjoining the imposition of interest, penalties, and other charges** on respondents’ loans.³⁷
2. **CA-G.R. SP No. 146157**, which sought to nullify the *Decision* dated **April 27, 2016** in SEC *En Banc* Case No. 04-14-325 holding that respondents’ loans were “**over-collateralized**” and directing the **release and eventual sale of the mortgaged properties**, in effect, relegating it to the status of an unsecured creditor under the rehabilitation plan and the law and denying it the opportunity to even agree to the terms of settlement of respondents’ loans.³⁸
3. **CA-G.R. SP No. 146331** which sought to nullify the *Decision* dated **April 27, 2016** in SEC *En Banc* Case No. 01-15-352, directing the SHP 2 to issue an order to conform to its Decision dated April 27, 2016 in SEC *En Banc* Case No. 01-15-352 despite the fact that the aforesaid decision has yet to become final and executory.³⁹

On the other hand, **respondents** initiated their **own petitions for review** under Rule 43:

1. **CA-G.R. SP No. 145586**, which assailed the *Decision* dated **April 27, 2016** in SEC *En Banc* Case No. 04-14-325 withholding the cancellation of the mortgages on the Caloocan and Bel-Air properties until the same shall have been sold and fully paid.⁴⁰
2. **CA-G.R. SP No. 145610**, which assailed the *Decision* dated **April 27, 2016** in SEC *En Banc* Case No. 01-15-352 revoking the

³⁶ *Id.* at 512.

³⁷ *Id.* at 22.

³⁸ *Id.* at 23.

³⁹ *Id.*

⁴⁰ *Id.* at 23–24.

designation of Sheriff Ignacio to implement the Order dated March 25, 2014 of the SHP2 in SEC Case No. 05-00-6609.⁴¹

Ruling of the Court of Appeals

By its consolidated Decision⁴² dated April 7, 2017, the Court of Appeals **affirmed** the Decision dated February 23, 2016 in SEC *En Banc* Case No. 03-13-286, **prohibiting petitioner from charging interest and penalties on outstanding loans beginning May 4, 2000**, but **reversed** the following SEC *En Banc* dispositions: (a) **Decision dated April 27, 2016** in SEC *En Banc* Case No. 04-14-325 on the grounds that the SEC therein **erroneously failed to order the cancellation of the mortgages** on respondents' Bel Air and Caloocan properties prior to their auction sale, and **erroneously ordered the release and transfer of the Legaspi Place property** to the assets pool; and (b) **Decision dated April 27, 2016** in SEC *En Banc* Case No. 01-15-352 which designated a special sheriff to implement its issuances, including its Decision dated April 27, 2016. Thus:

All told, We hold and so rule that SEC En Banc committed **no reversible error in its February 23, 2016 Decision** (First Assailed Decision) in SEC En Banc Case No. 03-13-286, **proscribing Chinabank from charging interest, penalties and other fees on SFSRC's and SFSDC's outstanding loans from the issuance of the Stay Order on May 04, 2000.**

Anent the second assailed **Decision dated April 27, 2016** in SEC En Banc Case No. 04-14-325, We conclude that **SEC En Banc erred**: (1) when, despite declaring the loans of SFSRC and SFSDC as **over-collateralized**, it **did not order the immediate cancellation** of the mortgages on the Bel-Air and Caloocan properties prior to the sale thereof in a public bidding; and (2) when it **ordered the release of the Legaspi Place property** so that it may be **transferred to an Asset Pool.**

Accordingly, the questioned **March 25, 2014 Order** of the Special Hearing Panel 2, the dispositive portion of which reads:

“WHEREFORE, premises considered, the hearing panel hereby resolves as follows:

1. Declaring the **petitioners' loans with Chinabank to be over-collateralized**. Hence, Chinabank is hereby **directed to release the corresponding mortgage on said properties**. Petitioners are hereby **authorized to sell the same via public bidding** within 180 days from date hereof. Accordingly, the Rehabilitation Receiver is directed to promulgate appropriate bidding rules and procedure, seeing to it that the value of the properties are maximized and the sale awarded to the highest bidder.

⁴¹ *Id.* at 24.

⁴² *Id.* at 8-46.



2. Directing **Chinabank to accept the proceeds of such sale, net of taxes and expenses, and to credit the same as partial payment** for the Php300,000,000.00 Million loan **(with no interest and charges whatsoever)** of the Petitioners.
3. Chinabank is further **directed to cancel/release the mortgage on The Legaspi Place, as well as to release the title/s** thereon to petitioners. Petitioners are directed **to resume construction thereat within one (1) year from release of mortgage and turn-over of said-title/s to Petitioners.** Thereafter, Petitioners shall **allocate for Chinabank as security, such number of units at the Legaspi Place as are sufficient to pay-off such loan balance based on current market value of the units.** Furthermore, Petitioners are directed **to pay the remaining unpaid balance to Chinabank on cash basis, (with no interest or charges whatsoever) from the proceeds of the sale of units** at The Legaspi Place within one (1) year from completion of the said project.

SO ORDERED.”

should be **reinstated.**

Finally, We find reversible error on the part of SEC En Banc in its April 27, 2016 Decision (Third Assailed Decision) in SEC En Banc Case No. 01-15-352, when it disregarded and set aside the acts of Sheriff Ignacio and designated a new special sheriff to implement its March 25, 2014 Order. We also find SEC En Banc's order to implement the Second Assailed Decision, (third paragraph of the Decision) erroneous, since We have already ruled that the latter (Second Assailed Decision) is bereft of merit.

Thus, the dispositive portion of the Third Assailed Decision:

“1. Taking note of the Sheriff's Return dated 11 December 2014 prepared and submitted by Mr. Rommel M. Ignacio, Sheriff IV of the Regional Trial Court of Makati City;

is hereby **AFFIRMED.**

Paragraph 2 wherein -

2. Designating said Sheriff Ignacio, as he is hereby designated pursuant to Section 10, Rule 39 of the Revised Rules of Court, to execute the necessary Deeds of Cancellation of Mortgage in accordance with the Writ of Execution dated October 28, 2014 issued in relation to the Order dated 25 March 2014;”

is hereby **REVERSED and SET ASIDE.** The Commission hereby designates Mr. Anthony Glenn C. Paggao as a Special Sheriff to implement SHP2's orders relating to the instant case.”

Paragraph 3 wherein -

3. Ordering the Register of Deeds of Makati City and the Register of Deeds of Caloocan City, as the case may be, as follows:

1.1 To register the aforesaid Deeds of Cancellation of Mortgage on TCT Nos. 206189, 201933, 205136, 298110 and 298109;

1.2 To cancel or revoke, or to consider as cancelled or revoked, the Owner's Duplicate Copies of TCT Nos. 206189, 201933, 205136, 298110 and 298109 which are in the possession or custody of China Banking Corporation;

1.3 To issue new Owner's Duplicate Copies of TCT Nos. 206189, 201933 and 205136 to and in the name of St. Francis Square Realty Corporation (formerly ASB Realty Corporation) all free from any liens and encumbrances; and

1.4 To issue Owner's Duplicate Copies of TCT Nos. 298110 and 298109 to and in the name of St. Francis Square Development Corporation (formerly Tiffany Tower Realty Corporation), all free from any liens and encumbrances.

is hereby REVERSED and SET ASIDE. This is hereby REMANDED to SHP2 to issue an Order that conforms with the Commission En Banc's Decision in SEC En Banc Case no. 04-14-325.”

is **set aside**. The Special Hearing Panel 2's December 22, 2014 Decision, which states that:

“**WHEREFORE**, premises considered, this Hearing Panel hereby resolves the Motion dated 18 November 2014 as follows:

1. Taking note of the Sheriff's Return dated 11 December 2014 prepared and submitted by Mr. Rommel M. Ignacio, Sheriff IV of the Regional Trial Court of Makati City;

2. Designating said Sheriff Ignacio, as he is hereby designated pursuant to Section 10, Rule 39 of the Revised Rules of Court, to execute the necessary Deeds of Cancellation of Mortgage in accordance with the Writ of Execution dated October 28, 2014 issued in relation to the Order dated 25 March 2014;

3. Ordering the Register of Deeds of Makati City and the Register of Deeds of Caloocan City, as the case may be, as follows:

3.1 To register the aforesaid Deeds of Cancellation of Mortgage on TCT Nos. 206189, 201933, 205136, 298110 and 298109;

3.2 To cancel or revoke, or to consider as cancelled or revoked, the Owner's Duplicate Copies of TCT Nos. 206189, 201933, 205136, 298110 and 298109 which are in the possession or custody of China Banking Corporation;

3.3 To issue new Owner's Duplicate Copies of TCT Nos. 206189, 201933 and 205136 to and in the name of St. Francis Square Realty Corporation (formerly ASB Realty Corporation) all free from any liens and encumbrances; and

3.4 To issue Owner's Duplicate Copies of TCT Nos. 298110 and 298109 to and in the name of St. Francis Square Development Corporation (formerly Tiffany [T]ower [R]ealty Corporation), all free from any liens and encumbrances.”

should be **reinstated**.

WHEREFORE, in view of the foregoing premises, the Court **resolves to DISMISS Chinabank's Petitions for Certiorari** filed in CA-G.R. SP No. 145290 and CA-G.R. SP No. 146157, and Petition *Ad Abundantiorum Cautelam* in C.A. GR-SP No. 146331.

With regard to CA-G.R. SP Nos. 145586 and 145610 filed by SFSRC and SFSDC, **the Court GRANTS said petitions and REINSTATES the Orders** of the SEC Special Hearing Panel 2, **dated March 25, 2014, and December 22, 2014 without modification.**

SO ORDERED. (Emphasis supplied).⁴³

Chinabank's motion for reconsideration was **denied** under *Resolution*⁴⁴ **dated July 6, 2017.**

The Present Petition

Chinabank now seeks relief *via* Rule 45.

For clarity, the Court of Appeals **reinstated** and **affirmed** SHP 2's **Order** dated **March 25, 2014** and **Order** dated **December 22, 2014**:

- **Order** dated **March 25, 2014**

WHEREFORE, premises considered, the hearing panel hereby resolves as follows:

1. Declaring the petitioners' loans with Chinabank to be over-collateralized. Hence, **Chinabank is hereby directed to release to petitioners the titles over the mortgaged Bel-Air and**

⁴³ *Id.* at 42–46.

⁴⁴ *Id.* at 48–52.

Caloocan properties and to cancel/release the corresponding mortgage on said properties. Petitioners are hereby **authorized to sell the same via public bidding** within 180 days from date hereof. Accordingly, the Rehabilitation Receiver is directed to promulgate appropriate bidding rules and procedure, seeing to it that the value of the properties are maximized and the **sale awarded to the highest bidder.**

2. Directing **Chinabank to accept the proceeds of such sale, net of taxes and expenses**, and to credit the same as partial payment for the Php300,000,000.00 Million loan (**with no interest and charges whatsoever**) of the Petitioners.
3. Chinabank is further **directed to cancel/release the mortgage on The Legaspi Place**, as well as **to release the title/s thereon to petitioners**. Petitioners are **directed to resume construction thereat within one (1) year from release of mortgage and turn-over of said title/s to Petitioners**. Thereafter, **Petitioners shall allocate for Chinabank as a security, such number of units as The Legaspi Place as are sufficient to pay-off such loan balance** based on current market value of the units. Furthermore, Petitioners are directed **to pay the remaining unpaid balance to Chinabank on cash basis, (with no interest or charges whatsoever)** from the proceeds of the sale of units at The Legaspi Place within one (1) year from completion of said project.

SO ORDERED (Emphasis supplied).⁴⁵

- Order dated December 22, 2014

WHEREFORE, premises considered, the Hearing Panel hereby resolves the Motion dated 18 November 2014 as follows:

1. Taking note of the Sheriff's Return dated 11 December 2014 prepared and submitted by Mr. Rommel M. Ignacio, Sheriff IV of the Regional Trial Court of Makati City;
2. Designating said Sheriff Ignacio, as he is hereby designated pursuant to Section 10, Rule 39 of the Revised Rules of Court, **to execute the necessary Deeds of Cancellation of Mortgage in accordance with the Writ of Execution dated October 28, 2014** issued in relation to the Order dated March 25, 2014;
3. Ordering the Register of Deeds of Makati City and the Register of Deed of Caloocan City, as the case may be, as follows:
 - 3.1 **To register the aforesaid Deeds of Cancellation of Mortgage** on TCT Nos. 206189, 201933, 205136, 298110 and 298109;
 - 3.2 **To cancel or revoke, or to consider as cancelled or revoked the Owner's Duplicate Copies** of TCT Nos. 206189, 201933, 205136, 298110, and 298109 which are in the possession or custody of China Banking Corporation;

⁴⁵ *Id.* at 67.

3.3 **To issue new Owner's Duplicate Copies** of TCT Nos. 206189, 201933, and 205136 **to and in the name of St. Francis Square Realty Corporation (formerly ASB Realty Corporation)** all free from any liens and encumbrances.

3.4 **To issue new Owner's Duplicate Copies** of TCT Nos. 298110 and 298109 **to and in the name of St. Francis Square Realty Corporation (formerly Tiffany Tower [R]ealty Corporation)**, all free from any liens and encumbrances.

SO ORDERED (Emphasis supplied).⁴⁶

Chinabank assails the foregoing SHP 2 *Orders* and argues:

- 1) The Court of Appeals erred in giving due course to respondents' erroneous Rule 43 petitions for review in violation of the Court's Administrative Circular No. 2-90 or "*Guidelines to be Observed in Appeals to the Court of Appeals and to the Supreme Court*," providing that **wrong or inappropriate modes of appeal will immediately warrant their dismissal**. In the absence of any exceptional or transcendental circumstance, respondents' petitions should have been dismissed outright.⁴⁷
- 2) The **rehabilitation plan does not compel a secured creditor to waive interests, penalties, and other charges on respondents' loans**. There is no law or judicial pronouncement compelling the absolute condonation of interest and penalty charges. Since it had not consented to the waiver of interests, penalties, and other charges, the Court of Appeals **should not have allowed the release of the mortgaged properties on ground of over-collateralization**.⁴⁸
- 3) The issue of **over-collateralization** is not just a matter of mathematics but goes into the very nature of the mortgage itself. Jurisprudence has settled the **concept of indivisibility of mortgages** in the sense that **each and every parcel under mortgage answers for the totality of the debt**. The **only time that the mortgages can be released is when all of respondents' loans have been paid**.⁴⁹
- 4) The Court of Appeals' **directive to release the Bel-Air, Caloocan, and Legaspi properties from mortgage violated its right to due process for it was unduly deprived of these properties**. In so doing, the Court of Appeals **relegated the bank to the status of an unsecured creditor**. Article 2126 of the Civil Code provides that so long as **the obligation for whose security a mortgage was**

⁴⁶ *Id.* at 71–72.

⁴⁷ *Id.* at 79–84.

⁴⁸ *Id.* at 84–92.

⁴⁹ *Id.* at 92–95.

constituted has not been fully paid, the mortgage should remain attached to and follow the property. Since the loans here have not been fully extinguished, the mortgages on the Bel-Air, Caloocan, and Legaspi properties are not deemed to have been released. Besides, the mortgage contract cannot be cancelled or modified without its consent.⁵⁰

- 5) The SHP 2's Order dated March 25, 2014 may **not be deemed final and executory** considering the fact that challenges against it, as well as the SHP 2's Order dated December 22, 2014 has not been settled yet with finality.⁵¹
- 6) The Court of Appeals erred in reinstating the SHP 2's Order dated December 22, 2014 designating Sheriff Rommel Ignacio (Sheriff Ignacio), Sheriff IV of RTC-Makati, to execute the deeds of cancellation or mortgage over the Bel-Air, Caloocan, and Legaspi properties. The Court has already pronounced that **court sheriffs cannot enforce writs of execution issued by quasi-judicial bodies.** Since the SEC is a quasi-judicial agency, its orders are not within the authority of sheriffs to execute. This policy is even reiterated in the OCA Circular No. 161-2016. Besides, the SEC already issued Resolution No. 586, Series of 2015, wherein a special sheriff had already been designated to implement SEC orders as well as its operating departments and special offices.⁵²
- 7) It is entitled to a temporary restraining order (TRO) since the enforcement of the assailed Court of Appeals issuances before the present petitions are resolved would cause it grave injustice.⁵³

In their Comment⁵⁴ dated December 19, 2017, **respondents SFSRC and SFSDC** counter:

- 1) The Court of Appeals can validly treat the petitions for review as special civil actions for certiorari since the same were filed within the 15-day reglementary period and a liberal application of the Rules would enhance fair trials and expedite justice;
- 2) In *China Banking Corporation v. ASB Holdings, Inc.*⁵⁵ and *MBTC v. ASB Holdings, Inc.*⁵⁶ the Court ruled that **interest, penalties, and other related charges accruing after the date of the initial suspension order shall not be payable by respondents.** The Court also sustained the portion of the rehabilitation plan, viz.: "*If the*

⁵⁰ *Id.* at 95–104.

⁵¹ *Id.* at 105–106.

⁵² *Id.* at 106–112.

⁵³ *Id.* at 112–113.

⁵⁴ *Id.*, Vol. II at 639–678.

⁵⁵ 595 Phil. 845, 855 (2008).

⁵⁶ 545 Phil. 604, 616 (2007).

dacion en pago herein contemplated does not materialize for failure of the secured creditors to agree thereto, this rehabilitation plan contemplates to settle the obligations (without interest, penalties, and other related charges accruing after the date of the initial suspension order) to secured creditors with mortgaged properties at ASB selling prices for the general interest on the employees, creditors, unit buyers, government, general public, and the economy.” In *BPI v. SEC*,⁵⁷ the Court reiterated the rehabilitation plan **requiring** respondents to “**settle the obligations**” (without interest, penalties and other related charges accruing after the date of the initial suspension order). Thus, it is erroneous for Chinabank to insist to claim interest, penalties, and other related charges.⁵⁸

- 3) In rehabilitation proceedings, the laws and rules are applied in the context of the very spirit and purpose of corporate rehabilitation. It is for the good not only of the creditors, but a gamut of stakeholders. The “**cram-down**” power of the rehabilitation court means that **the court may approve a rehabilitation plan over the objection of the creditors if, in its judgment, the rehabilitation of the debtors is feasible and the opposition of the creditors is manifestly unreasonable.** Additionally, the Court of Appeals’ directive to release the Bel-Air and Caloocan properties emanated from the **power of any court in rehabilitation cases to determine what could possibly help an ailing company to recover** from its situation. In any event, **Chinabank remains to be a secured creditor** since it *still has the Legaspi Place property as security* and its *priority in the payment ladder subsists*. Further, there is no undue deprivation of property to speak of since the mortgaged properties are still owned by respondents.⁵⁹
- 4) The SHP 2’s **Order dated March 25, 2014** is **immediately executory** per Section 2-5, Rule II of the *Rules of Procedure on Corporate Recovery* and Section 5, Rule III of A.M. No. 00-8-10-SC.⁶⁰
- 5) The Court of Appeals properly upheld the SHP 2’s designation of Sheriff Ignacio to **execute the deeds of cancellation of mortgage on the Bel-Air, Caloocan, and Legaspi Place properties.** The Court of Appeals correctly held that A.M. No. 14-7-224-RTC and A.M. No. 15-07-12-SC are inapplicable here because there, what was sought to be executed was a writ of possession issued by another government agency, while here, it is the issuances of the SEC itself. The SEC has **always utilized the services of court sheriffs** in the execution of its decisions, orders, and awards, as there is no relevant

⁵⁷ 565 Phil. 588, 597 (2007).

⁵⁸ *Rollo*, Vol. II, pp. 653–663.

⁵⁹ *Id.* at 664–672.

⁶⁰ *Id.* at 672–673.

provision on this in the 2006 SEC Rules of Procedure. Besides, the SEC has always relied on Rule 39 of the Rules of Court when it comes to the execution of its decisions, orders, and processes.⁶¹

- 6) Chinabank is not entitled to a temporary restraining order (TRO) against the execution of the assailed dispositions since Chinabank does not stand to suffer any grave injustice or irreparable injury. In fact, it will still be paid what is due it.⁶²

By Comment⁶³ dated September 17, 2018, the Office of the Solicitor General (OSG),⁶⁴ representing the SEC, echoes respondents' arguments.

Under its Reply⁶⁵ dated July 10, 2019, Chinabank merely refers back to its arguments in its present Petition.

Chinabank filed its Very Urgent and Most Respectful Reiteration of the Application for the Issuance of a Temporary Restraining Order⁶⁶ dated December 21, 2020 while respondents⁶⁷ and the OSG⁶⁸ filed their respective comments thereon.

Issues

- 1) whether the Court of Appeals erred when it treated respondents' petitions for review as petitions for certiorari;
- 2) whether the Court of Appeals erred when it ordered the suspension or condonation of interests, penalties, and other charges on respondents' loans, in accordance with the Rehabilitation Plan;
- 3) whether there was over-collateralization of respondents' loans, and whether the release of the subject properties from mortgage was proper;
- 4) whether the SHP 2 **Order dated March 25, 2014** is immediately executory;
- 5) whether the Court of Appeals correctly reinstated the SHP 2's **Order dated December 22, 2014** designating Sheriff Ignacio to execute the deeds of cancellation of mortgage on respondents' properties.

⁶¹ *Id.* at 673–677.

⁶² *Id.* at 677–678.

⁶³ *Id.* at 763–796.

⁶⁴ Through Solicitor General Jose C. Calida, Assistant Solicitor General Raymund I. Rigodon, and Associate Solicitor Dianne Margarete T. De Los Reyes.

⁶⁵ *Rollo*, Vol. II, pp. 812–825.

⁶⁶ *Id.* at 837–851.

⁶⁷ *Id.* at 1099–1108.

⁶⁸ *Id.* at 1216–1236.

Our Ruling

We affirm in the main.

First. In *Victorio-Aquino v. Pacific Plans, Inc.*,⁶⁹ the Court clarified that the **appropriate procedure** for assailing orders issued by tribunals (i.e., Regional Trial Court or Securities and Exchange Commission) following the **approval of rehabilitation plans** will depend on which rule was in effect when these orders were elevated to the Court of Appeals, thus:

While We agree with respondent that the **later rule** states that **orders issued after the approval of the rehabilitation plan** can be reviewed only through a special civil action for **certiorari under Rule 65** of the Rules of Court, such rule does not apply to the instant case as the same was not yet in effect at the time petitioner filed her Petition for Review with the CA. Stated otherwise, the **prevailing law** at the time petitioner filed said petition with the CA is the **Interim Rules** as well as **A.M. No. 04-9-07-SC**. As such, the proper remedy of appeal from all decisions and final orders of the RTC was **Rule 43** of the Rules of Court, and **not Rule 65** thereof.⁷⁰

Here, the applicable rule was **Rule 6** of the **2013 *Financial Rehabilitation Rules of Procedure (FRIA)***, viz.:

Rule 6 Procedural Remedies

Section 1. Motion for Reconsideration. — A party may file a motion for reconsideration of any order issued by the court prior to the approval of the Rehabilitation Plan. No relief can be extended to the party aggrieved by the court's order on the motion through a special civil action for certiorari under Rule 65 of the Rules of Court.

An order issued after the approval of the Rehabilitation Plan can be reviewed only through a special civil action for certiorari under Rule 65 of the Rules of Court. (Emphasis supplied)

Thus, Chinabank **properly initiated** its petitions for certiorari under Rule 65 in CA-G.R. SP Nos. 145290, 146157, and 146331. Meanwhile, respondents **erroneously availed** of a Petition for Review under Rule 43 in CA-G.R. SP Nos. 145586 and 145610.

The Court of Appeals, nonetheless, **opted to relax the strict application** of procedural rules and admitted respondents' twin **Rule 43 Petitions** in CA-G.R. SP Nos. 145586 and 145610. And **this was for good reason**. The **issues raised** by the parties are **closely intertwined** and the

⁶⁹ 749 Phil. 790–822 (2014).

⁷⁰ *Id.* at 803.

higher interest of substantial justice dictate that the cases be **resolved on the merits once and for all**.

True, the **importance of complying with procedural rules cannot be over emphasized** for these are tools designed to facilitate the adjudication of cases. They are set in place to obviate arbitrariness, caprice, or whimsicality in the administration of justice.

But if a **stringent application** of the rules would **hinder rather than serve** the demands of substantial justice, the former must yield to the latter. *“Litigations should, as much as possible, be decided on the merits and not on technicalities.”*⁷¹ The Court of Appeals aptly reasoned:

Using the same yardstick as the Grecio-Cuerdo Case, We find no reason not to apply the above-cited case herein, although what We have now are petitions for review under Rule 43 which will be treated as petitions for certiorari under Rule 65. **First**, SFSRC's and SFSDC's petitions were **filed within the reglementary period** for filing a petition for certiorari under Rule 65. In fact, the petitions for review were **filed within fifteen (15) days** from receipt of the assailed SEC Decisions, that is, way before the expiration of the 60-day period for filing a Rule 65 petition for certiorari. **Second**, SFSRC's and SFSDC's petitions for review **contain all the matters required** by Rule 65 of the Rules of Court. Finally, We hold and so rule that sufficient reason exists to justify the relaxation of the rules with the end-in-view of substantially settling issues raised in the present appeals.

SFSRC and SFSDC resorted to a Rule 43 petition for review **in good faith**. Records show that, **after a careful perusal of the pertinent law and jurisprudence, they believed in good faith that A.M. No. 00-8-10-SC, FRIA and A.M. No. 12-12-11-SC are inapplicable** to the instant cases re: proper mode of appeal to the Court of Appeals. They, **thus, applied A.M. No. 04-9-07-SC** which, to reiterate, provides that all decisions and final orders shall be appealed to the Court of Appeals through a petition for review under Rule 43 of the Rules of Court, to be filed within fifteen (15) days from notice of the decision or final order of the Regional Trial Court. Otherwise stated, **SFSRC and SFSDC have adequately explained why they chose to avail Rule 43**, albeit, it proved to be the wrong mode of appeal. Applying *City of Manila v. Grecio-Cuerdo*, this, for Us, is a sufficient reason to justify the relaxation of the rules.

Assuming arguendo that SFSRC's and SFSDC's petitions for review cannot be treated as petitions for certiorari, We are still not inclined to dismiss the same, for it has already been settled that rules of procedures shall be liberally interpreted.⁷² (Emphasis supplied)

Additionally, it is a matter of record that respondents, through **ASB Holdings, Inc.**, have been to **this Court** on issues revolving around its Rehabilitation Plan several times.⁷³ The Court of Appeals correctly gave due

⁷¹ *Mitra v. Sablan-Guevarra*, 830 Phil. 277, 283 (2018).

⁷² *Rollo*, Vol. I, p. 27.

⁷³ See e.g., *Situs Development Corporation v. Asia Trust Bank*, 691 Phil. 707 (2013); *PNB v. SEC*, 596 Phil. 586 (2009); *China Banking Corporation v. ASB Holdings*, supra; *Union Bank v. ASB Development*

course to the Rule 43 Petitions because by doing so it was able to access and assess **all the relevant adjudicative facts and arguments** through respondents' allegations in resolving the issues between respondents and Chinabank.

In fine, the Court of Appeals cannot be faulted when it allowed substantial justice to prevail over the strict application of technical rules of procedure in this case.

Second. A rehabilitation plan aims to restore the financial well-being and viability of an insolvent debtor using various means including, but not limited to, debt forgiveness, debt rescheduling, reorganization or quasi-reorganization, *dacion en pago*, debt-equity conversion, and sale of the business (or parts of it) as a going concern, or setting-up of new business entity or other similar arrangements as may be approved by the court or creditors.⁷⁴ This **legal principle** has been enunciated during those times respondents' Rehabilitation Plan, and similar rehabilitation plans, were before this Court for review.

To stress:

“... corporate rehabilitation connotes the **restoration of the debtor** to a **position of successful operation and solvency**, if it is shown that *its continued operation is economically feasible and its creditors can recover by way of the present value of payments projected in the rehabilitation plan*, more if the corporation continues as a going concern than if it is immediately liquidated.”⁷⁵

Rehabilitation proceedings in our jurisdiction have **equitable and rehabilitative purposes**. Thus:

On the one hand, “they attempt to provide for the **efficient and equitable distribution of an insolvent debtor's remaining assets to its creditors**; and on the other, to **provide debtors with a fresh start** by relieving them of the weight of their outstanding debts and **permitting them to reorganize their affairs**.”⁷⁶

The purpose of rehabilitation proceedings is to enable the company to **gain a new lease on life and thereby allow creditors to be paid their claims from its earnings**.⁷⁷

Here, relevant portions of the rehabilitation plan read:

IV. THE REVISED REHABILITATION PLAN

Corporation, 582 Phil. 559 (2008); *BPI v. SEC*, supra; *Metropolitan Bank and Trust Company v. ASB Holdings, Inc.*, supra.

⁷⁴ Section 4 (ii), Financial Rehabilitation and Insolvency Act (FRIA) of 2010.

⁷⁵ *Castillo v. Uniwid Warehouse Club, Inc.*, 634 Phil. 41, 48–49 (2010).

⁷⁶ *China Banking Corporation v. ASB Holdings, Inc.*, supra note 55, at 857 (2008), citing *BPI v. SEC*, supra note 57, at 595.

⁷⁷ *PNB v. Court of Appeals*, 596 Phil. 586, 611 (2009); *Metropolitan Bank and Trust Company v. ASB Holdings, Inc.*, supra note 56, at 618.

A. The Total Approach

It is apparent that ASB's corporate indebtedness needs to be reduced as quickly as possible in order to prevent rapid deterioration in equity. Based on calculations of the net realizable value of real estate assets and other assets determined on a combined basis, there appears to be sufficient assets to meet liabilities provided a significant portion of assets are quickly converted to a reduction of debt. Based on the current status of the Philippine real estate sector, assets will not be converted quickly enough through normal sales method, interest accumulating over the period of sales will cause unsecured creditors to incur substantial losses. In order to reduce debt quickly, we must do the following:

1. Complete or sell on-going projects;
2. **Invite secured creditors to complete *dacion en pago* transactions, waiving all penalties; and**
3. Invite unsecured creditors to purchase real estate parcels and other assets and set-off the amount of their outstanding claim against the purchase price.

The assets included in the above program include all real assets.

In order to determine the feasibility of the above, representatives of our financial advisors met with or had discussions with most of the secured creditors. Preliminary discussions indicate support from the secured creditors towards the concepts of the program associated with them. **The majority of these secured creditors appear to want to complete *dacion en pago* transactions based on mutually agreed upon terms.** We attach as Appendix A, a listing of properties expected to be subject to *dacion en pago* transactions. We also attach as Appendices B to O, term sheets setting out ASB's expectations of the outcome of the *dacion en pago* transactions with the secured creditors. We continue to pursue discussions with secured creditors. Based on the program, secured creditors' claims amounting to PhP5.192 billion will be paid in full including interest up to April 30, 2000. **Secured creditors have been asked to waive all penalties and other charges. This *dacion en pago* program is essential to eventually pay all creditors and rehabilitate the ASB Group of Companies. If the *dacion en pago* herein contemplated does not materialize for failure of the secured creditors to agree thereto, this rehabilitation plan contemplates to settle the obligations (without interest, penalties, and other related charges accruing after the date of the initial suspension order) to secured creditors with mortgaged properties at ASB selling prices for the general interest of the employees, creditors, unit buyers, government, general public and economy.**⁷⁸ (Emphasis supplied)

Based thereon, **secured creditors have two (2) options** by which the loans owing them can be settled: **1) through *dacion en pago*** wherein all penalties shall be waived; ***or* 2) if the secured creditors do not consent to *dacion en pago*, through the disposition or sale of the mortgaged properties at selling prices but *without interest, penalties, and other related***

⁷⁸ *Rollo*, Vol. I, pp. 29–30.

charges accruing after the date of the initial suspension order, which here was **May 4, 2000**.

Contrary to Chinabank's assertion, these two (2) options are found in the Rehabilitation Plan itself which the Court **has confirmed with finality** way back in 2007 *via MBTC v. ASB Holdings, Inc.*⁷⁹ and *BPI v. SEC.*⁸⁰

We, therefore, quote with concurrence, the relevant disquisition of the Court of Appeals, *viz.*:

Furthermore, it is clear that only in the *dacion en pago* transactions, where the waiver of interests, penalties and related charges are not compulsory in nature. Simply put, waiver of interests is merely a proposal for creditors to accept, **but this is true only in *dacion en pago* transactions, not in the second option.** The **second option**, which was **validated by the Supreme Court, specifically states that the creditor cannot impose interests and other charges after the issuance of the stay order.**

In the instant case, **Chinabank had refused the *dacion en pago* transaction option.** This is evident in its **Manifestation filed on November 13, 2009**, wherein it informed the SHP and SFSRC and SFSDC of **its intent to decline the *dacion en pago* offer.** For doing so, **Chinabank cannot now insist that it cannot be compelled to waive interests and other charges.** Simply put, **Chinabank is already in estoppel.**⁸¹ (Emphasis supplied)

Verily, following **Chinabank's refusal to avail of *dacion en pago***, the **only remaining option to pay off the loans** was through the **disposition or sale of the mortgaged properties, without accrual of interest, penalties, and other related charges following the issuance of the stay order on May 4, 2000.** This exactly is what happened here.

Third. We **respectfully disagree** with the observations that the two options available to Chinabank, as a secured creditor, for settling of loans under the ASB Rehabilitation Plan, *i.e.*, 1) through *dacion en pago* wherein all penalties shall be waived; or 2) if the secured creditors do not consent to *dacion en pago*, through the disposition or sale of the mortgaged properties at selling prices *but* without interest, penalties, and other related charges accruing after the date of the initial suspension order, are **not coercive** but subject to negotiation and consent.

The terms and conditions of an approved rehabilitation plan are **binding on creditors.** As emphasized in *BPI v. Sarabia Manor Hotel Corp.*:⁸²

⁷⁹ *Supra* note 56.

⁸⁰ *Supra* note 57.

⁸¹ *Rollo*, Vol. I, p. 32.

⁸² 715 Phil. 420 (2013).

[t]he “**cram-down**” clause, this provision, which is currently incorporated in the FRIA, is necessary **to curb the majority creditors’ natural tendency to dictate their own terms** and conditions to the rehabilitation, absent due regard to the greater long-term benefit of all stakeholders. Otherwise stated, **it forces the creditors to accept the terms and conditions of the rehabilitation plan**, preferring long-term viability over immediate but incomplete recovery.⁸³ (Emphasis supplied, citation omitted)

True, our esteemed then Justice (now Senior Associate Justice) Marvic M.V.F. Leonen, through his *ponencia* in *Viva Shipping Lines, Inc. v. Keppel Philippines Mining, Inc.*,⁸⁴ expounded on the concept of **present value recovery** in this wise:

Present value recovery acknowledges that, in order to pave way for rehabilitation, the creditor will not be paid by the debtor when the credit falls due. The court may order a suspension of payments to set a rehabilitation plan in motion; in the meantime, the creditor remains unpaid. By the time the creditor is paid, the financial and economic conditions will have been changed. Money paid in the past has a different value in the future. It is unfair if the creditor merely receives the face value of the debt. Present value of the credit takes into account the interest that the amount of money would have earned if the creditor were paid on time.

Trial courts must ensure that **the projected cash flow from a business’ rehabilitation plan** allows for the *closest* **present value recovery** for its creditors. If the projected cash flow is realistic and allows the corporation to meet all its obligations, then courts should favor rehabilitation over liquidation. However, if the projected cash flow is unrealistic, then courts should consider converting the proceedings into that for liquidation to protect the creditors.⁸⁵ (Emphasis supplied, citations omitted)

Yet, a close reading of the *ponencia* of Senior Associate Justice Leonen reveals that the principle of present value recovery is applied in determining the feasibility of a rehabilitation plan **prior to its approval**. And, it is not the *precise* or *exact* amount equal to the **present value recovery**, but something **closest** to it.

As outlined in the *ponencia* of Senior Associate Justice Leonen, the specific characteristics of an economically feasible rehabilitation plan are: 1) the debtor has assets that can generate more cash if used in its daily operations than if sold; 2) liquidity issues can be addressed by a practicable business plan that will generate enough cash to sustain daily operations; and 3) the debtor has a definite source of financing for the proper and full implementation of a rehabilitation plan that is anchored on realistic assumptions and goals.

In the cases at bar, these principles and guidelines are **presumed to exist** since the ASB Rehabilitation Plan **had already been approved and**

⁸³ *Id.* at 436.

⁸⁴ 781 Phil. 95 (2016).

⁸⁵ *Id.* at 130.

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upheld by this Court with finality in *MBTC v. ASB Holdings, Inc.*,⁸⁶ and *BPI v. SEC.*⁸⁷ Consequently, the provisions in the rehabilitation plan must be duly observed and complied with **vis-à-vis and in accordance with the “cram down” principle.**

Necessarily, therefore, the following provisions of the rehabilitation plan are **binding on the creditors as it has been stipulated, viz.:**

In order to determine the feasibility of the above, representatives of our financial advisors met with or had discussions with most of the secured creditors. Preliminary discussions indicate support from the secured creditors towards the concepts of the program associated with them. **The majority of these secured creditors appear to want to complete *dacion en pago* transactions based on mutually agreed upon terms.** We attach as Appendix A, a listing of properties expected to be subject to *dacion en pago* transactions. We also attach as Appendices B to O, term sheets setting out ASB's expectations of the outcome of the *dacion en pago* transactions with the secured creditors. We continue to pursue discussions with secured creditors. Based on the program, secured creditors' claims amounting to PhP5.192 billion will be paid in full including interest up to April 30, 2000. **Secured creditors have been asked to waive all penalties and other charges. This *dacion en pago* program is essential to eventually pay all creditors and rehabilitate the ASB Group of Companies. If the *dacion en pago* herein contemplated does not materialize for failure of the secured creditors to agree thereto, this rehabilitation plan contemplates to settle the obligations (without interest, penalties, and other related charges accruing after the date of the initial suspension order) to secured creditors with mortgaged properties at ASB selling prices for the general interest of the employees, creditors, unit buyers, government, general public[,] and economy.**⁸⁸ (Emphasis supplied)

The provision is clear: *“If the *dacion en pago* herein contemplated does not materialize for failure of the secured creditors to agree thereto, this rehabilitation plan contemplates to settle the obligations (without interest, penalties, and other related charges accruing after the date of the initial suspension order) to secured creditors with mortgaged properties at ASB selling prices for the general interest of the employees, creditors, unit buyers, government, general public[,] and economy.”*⁸⁹

This statement may be broken down to mean that the secured creditors have two (2) options by which the loans owing them can be settled: 1) through *dacion en pago* wherein all penalties shall be waived; or 2) if the secured creditors do not consent to *dacion en pago*, through the disposition or sale of the mortgaged properties at selling prices, **but** without interest, penalties, and other related charges accruing after the date of the initial suspension order.

Indeed, when the **terms of the document are so clear and explicit** that they do not justify an attempt to read into it any alleged intention of the parties,

⁸⁶ *Supra* note 56.

⁸⁷ *Supra* note 57.

⁸⁸ *Rollo*, Vol. I, pp. 29–30.

⁸⁹ *Id.* at 30.

the terms are **to be understood literally just as they appear** on the face of the document.⁹⁰ If the Court believed **otherwise**, it **would have said so** in the several times that this ASB Rehabilitation Plan was before this Court for clarification.

Fourth. Rehabilitation has two purposes: (a) to distribute the assets of the insolvent debtor to its creditors in an efficient and equitable manner; and (b) to provide the debtor with a fresh start. Thus:

“Rehabilitation proceedings in our jurisdiction have **both equitable and rehabilitative purposes**. On the one hand, they attempt to provide for the efficient and equitable distribution of an insolvent debtor’s remaining assets to its creditors; and on the other, to provide debtors with a “fresh start” by relieving them of the weight of their outstanding debts and permitting them to reorganize their affairs.”⁹¹

Since the Court **had already long confirmed the validity of the subject Rehabilitation Plan**, its terms must be strictly complied with as a consequence of the “cram-down” principle. *BPI v. Sarabia Manor Hotel Corp.*⁹² is apropos:

Among other rules that foster the foregoing policies, Section 23, Rule 4 of the Interim Rules of Procedure on Corporate Rehabilitation (Interim Rules) states that a rehabilitation plan may be approved even over the opposition of the creditors holding a majority of the corporation’s total liabilities if there is a showing that rehabilitation is feasible and the opposition of the creditors is manifestly unreasonable. **Also known as the “cram-down” clause, this provision**, which is currently incorporated in the FRIA, **is necessary to curb the majority creditors’ natural tendency to dictate their own terms and conditions to the rehabilitation**, absent due regard to the greater long-term benefit of all stakeholders. Otherwise stated, **it forces the creditors to accept the terms and conditions of the rehabilitation plan, preferring long-term viability over immediate but incomplete recovery.**⁹³ (Emphasis supplied)

In fact, **one of the consequences** of the exercise of the “cram-down” power is the **impairment of contracts**. *Victorio-Aquino v. Pacific Plans, Inc.*⁹⁴ elucidates further:

It is undisputable that the corporation is in the process of corporate rehabilitation precisely because it is undergoing financial distress. **Petitioner cannot expect to receive the contracted amount owed by respondent because a modification of the terms and conditions of the contract is certainly foreseeable and reasonable in a corporate rehabilitation case**, as correctly held by the Rehabilitation Court, to wit:

⁹⁰ *Cathay Land, Inc. v. Ayala Land, Inc.*, 816 Phil. 499, 516 (2017).

⁹¹ *Asiatruster Development Bank v. First Aikka Development, Inc.*, 665 Phil. 313, 330–331 (2011).

⁹² *Supra* note 82.

⁹³ *Id.* at 436.

⁹⁴ *Supra* note 69.

x x x It is an established principle in rehabilitation proceedings that rehabilitation courts have the cram down power to approve rehabilitation plans even over the objections of creditors, which cram down power shall nonetheless bind the latter. In fact, the CARR is given the authority to “notify counterparties and the court as to contracts that the debtor has decided to continue to perform or breach.” **A fortiori, the mere impairment of contracts is not a justification to question the modification of a rehabilitation plan because the very nature of rehabilitation proceedings sometimes necessitates such a course of action.**⁹⁵ (Emphases supplied)

To emphasize, the legal principle of non-impairment of contracts does not apply to judicial decisions which examine whether contracts are unconscionable or contrary to public policy, public order or morals. Necessarily, with this judicial power, contracts would have to be impaired for the greater good by judicial decisions.

On this score, there is **nothing unlawful** with the directive of the Court of Appeals to **release the Bel-Air, Caloocan, and Legaspi properties from mortgage**. It **cannot be considered as an infringement** of Chinabank’s alleged right to due process. For the **modification of the mortgage contracts** in fact is **part and parcel of the Rehabilitation Plan** itself.

Fifth. It is true that a secured creditor, like Chinabank, **does not lose its preference of credit** in rehabilitation proceedings. In fact, the Court, in *MBTC v. ASB Holdings, Inc.*,⁹⁶ emphasized this when it upheld the ASB Rehabilitation Plan:

We are not convinced that the approval of the Rehabilitation Plan impairs petitioner bank's lien over the mortgaged properties. Section 6 [c] of P.D. No. 902-A provides that "upon appointment of a management committee, rehabilitation receiver, board or body, pursuant to this Decree, all actions for claims against corporations, partnerships or associations under management or receivership pending before any court, tribunal, board or body shall be suspended."

By that statutory provision, it is clear that the approval of the Rehabilitation Plan and the appointment of a rehabilitation receiver merely suspend the actions for claims against respondent corporations. Petitioner bank's preferred status over the unsecured creditors relative to the mortgage liens is retained, but the enforcement of such preference is suspended. The loan agreements between the parties have not been set aside and petitioner bank may still enforce its preference when the assets of ASB Group of Companies will be liquidated. Considering that the provisions of the loan agreements are merely suspended, there is no impairment of contracts, specifically its lien in the mortgaged properties.

⁹⁵ *Id.* at 819.

⁹⁶ *Supra* note 56.

As we stressed in *Rizal Commercial Banking Corporation v. Intermediate Appellate Court*, such suspension "shall not prejudice or render ineffective the status of a secured creditor as compared to a totally unsecured creditor," for what P.D. No. 902-A merely provides is that all actions for claims against the distressed corporation, partnership or association shall be suspended. This arrangement provided by law is intended to give the receiver a chance to rehabilitate the corporation if there should still be a possibility for doing so, without being unnecessarily disturbed by the creditors' actions against the distressed corporation. However, in the event that rehabilitation is no longer feasible and the claims against the distressed corporation would eventually have to be settled, the secured creditors, like petitioner bank, shall enjoy preference over the unsecured creditors.

Yet, preference of credit does not equate to retention of a lien over a particular set of properties, as insisted by Chinabank. *DBP v. Secretary of Labor*⁹⁷ explains the concept of preference of credit, thus:

The rationale for making the application of Article 110 of the Labor Code contingent upon the institution of bankruptcy or judicial liquidation proceedings against the employer is premised upon the very nature of a preferential right of credit. **A preference of credit bestows upon the preferred creditor an advantage of having his credit satisfied first ahead of other claims which may be established against the debtor. Logically, it becomes material only when the properties and assets of the debtor are insufficient to pay his debts in full; for if the debtor is amply able to pay his various creditors in full, how can the necessity exist to determine which of his creditors shall be paid first or whether they shall be paid out of the proceeds of the sale of the debtor's specific property?** Indubitably, the preferential right of credit attains significance only after the properties of the debtor have been inventoried and liquidated, and the claims held by his various creditors have been established [*Kuenzle & Streiff (Ltd.) v. Villanueva*, 41 Phil. 611 (1916); *Barretto v. Villanueva*, G.R. No. L-14938, December 29, 1962, 6 SCRA 928; *Philippine Savings Bank v. Lantin*, G.R. No. L-33929, September 2, 1983, 124 SCRA 476.]⁹⁸ (Emphasis supplied)

Verily, **Chinabank's status as a secured creditor** comes into play **only in the event** that respondents become unviable and must be liquidated. Apart from that scenario, retaining a lien on the Bel-Air, Caloocan, and Legaspi properties **cannot be insisted upon.**

Sixth. The SHP 2's Order dated March 25, 2014 is immediately executory. We adopt in full the following disquisition of the Court of Appeals:

Section 2-5, Rule II of the Rules of Procedure on Corporate Recovery categorically states:

"Section 2-5. Orders immediately executory. - Every order issued by the Commission under these Rules is

⁹⁷ 259 Phil. 254 (1989).

⁹⁸ *Id.* at 259.

immediately executory. A petition for review or an appeal therefrom shall not stay the execution of the order unless restrained or enjoined. The review of any order or decision or an appeal therefrom shall be in accordance with the provisions of P.D. 902-A and the Rules of Procedure of the Commission.”

Pending the resolution of the case, or on December 02, 2008, the Supreme Court came up with A.M. No. 00-8-10-SC, otherwise known as “Rules of Procedure on Corporate Rehabilitation,” which, in effect, amended the previous Rules of Procedure on Corporate Recovery. Despite the amendment, the Supreme Court affirmed the immediately executory nature of SEC orders and decisions, to wit:

“RULE 3 General Provisions

x x x x

Section 5. Executory Nature of Orders. - Any order issued by the court under these Rules is immediately executory. A petition to review the order shall not stay the execution of the order unless restrained or enjoined by the appellate court. Unless otherwise provided in these Rules, the review of any order or decision of the court or an appeal therefrom shall be in accordance with the Rules of Court; provided, however, that the reliefs ordered by the trial or appellate courts shall take into account the need for resolution of proceedings in a just, equitable and speedy manner.”

As things are, it is undoubtedly clear that SEC’s orders, as well as that of SHP2, are immediately executory, absent any restraining order upon review.

In the instant case, records show that, up to date, neither had the SEC En Banc, nor this Court issued any order restraining the implementation of the March 25, 2014 Order. Accordingly, the same should be immediately executed and implemented.⁹⁹

So must it be.

Going now to the designation of Sheriff Ignacio of the Regional Trial Court of Makati City to implement the SHP 2’s **Order dated December 22, 2014**, we modify.

OCA Circular No. 161-2016 dated July 22, 2016 comes to the fore:

In a subsequent case, in A.M. No. 15-07-12-SC (Re: Enforcement by Court Sheriffs of the Writs of Execution Issued by Quasi-Judicial Bodies, e.g., Construction Industry Arbitration Commission, Housing and Land Use Regulatory Board, and PAG-IBIG), dated 2 February 2016, the Court **en banc** re-affirmed its Resolution dated 26 August 2014 and “[r]esolved to clarify that court sheriffs cannot enforce writs of execution

⁹⁹ *Rollo*, Vol. I, pp. 39–40.

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issued by quasi-judicial bodies pursuant to the Resolution dated August 26, 2014 in A.M. No. 14-7-224-RTC.”

In view of the Court's categorical declaration that court sheriffs cannot enforce writs issued by quasi-judicial bodies, all concerned are hereby **DIRECTED** to **REFRAIN** from **DESIGNATING** their respective sheriffs to implement all writs issued by the said agencies.

Clearly, the Court of Appeals **erred** when it reinstated the SHP 2's **Order dated December 22, 2014**, designating Sheriff Ignacio “*to execute the necessary Deeds of Cancellation of Mortgage in accordance with the Writ of Execution dated October 28, 2014 issued in relation to the Order dated 25 March 2014.*”¹⁰⁰

Notably, per **SEC Resolution No. 586 (Series of 2015)**, Special Sheriff Paggao had already been designated to implement the orders of the SEC, its operating departments and special offices. Consequently, **where Sheriff Ignacio had left off, Special Sheriff Paggao should take over** insofar as enforcing the **Writ of Execution dated October 28, 2014** issued in relation to the **Order dated March 25, 2014** is concerned.


ACCORDINGLY, the Petition is **DENIED**. The Decision dated April 7, 2017 and Resolution dated July 6, 2017 of the Court of Appeals in CA-G.R. SP Nos. 145290, 145586, 145610, 146157, and 146331 are **AFFIRMED** with **MODIFICATION**. The designation of Mr. Rommel M. Ignacio, Sheriff IV of the Regional Trial Court of Makati City, is **REVOKED**. In his stead, Special Sheriff Anthony Glenn Paggao is **DIRECTED TO IMPLEMENT** the **Writ of Execution dated October 28, 2014** issued in relation to the **Order dated March 25, 2014** in accordance with **SEC Resolution No. 586 (Series of 2015)**.

SO ORDERED.


AMY C. LAZARO-JAVIER
Associate Justice

¹⁰⁰ *Id.* at 505.

WE CONCUR:



MARVIC MARIO VICTOR F. LEONEN
Senior Associate Justice
Chairperson



MARION V. LOPEZ
Associate Justice



JHOSEP V. LOPEZ
Associate Justice



ANTONIO T. KHO, JR.
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARVIC MARIO VICTOR F. LEONEN
Senior Associate Justice
Chairperson, Second Division



CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ALEXANDER G. GESMUNDO
Chief Justice

