Republic of the Philippines
Department of Finance
Securities and Exchange Commission
COMMISSION EN BANC

HEDY S.C. YAP-CHUA, for herself and on behalf of **HARVEST ALL INVESTMENT LIMITED, VICTORY FUND LIMITED**, and **BONDEAST PRIVATE LIMITED**,
Complainant-Appellants,

-versus-

SEC En Banc Case No. 07-22-501
Promulgated: 15 December 2022

ALLIANCE SELECT FOODS INTERNATIONAL, INC.
Respondent- Appellee.
x---x

DECISION

Before the Securities and Exchange Commission (Commission) is the Appeal Memorandum dated 3 June 2022 (the "Appeal") which was filed on 9 June 2022, praying for the issuance of an order declaring the private placement of Strongoak, Inc. and the stock rights offering in its favor null and void, and seeking the reversal of the Decision dated 19 May 2022 (the "Assailed Decision") issued by the Markets & Securities Regulation Department (MSRD), the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the Petition is hereby DISMISSED for forum shopping and prescription of action."

THE RELEVANT FACTS

ASFII was incorporated on 1 September 2003, with the primary purpose of engaging in the business of manufacturing canned tuna and other processed seafoods and to trade the same on a wholesale basis.[1] At the time of its incorporation, ASFII had an authorized capital stock of

[1] Articles of Incorporation of ASFII, Article SECOND

Pesos: One Million Six Hundred Thousand (PhP1,600,000.00) divided into 1,600,000 shares with a par value of PhP1.00 per share.[2]

On 19 January 2004, ASFII amended its Articles of Incorporation (AoI) by increasing its authorized capital stock from Pesos: One Million Six Hundred Thousand (PhP1,600,000.00) divided into 1,600,000 shares with a par value of PhP1.00 per share, to Pesos: Three Hundred Million (PhP300,000,000.00) divided into 300,000,000 shares with a par value of PhP1.00 per share.[3]

On 14 December 2005, ASFII amended its AoI by increasing its authorized capital stock from Pesos: Three Hundred Million (PhP300,000,000.00) divided into 300,000,000 shares with a par value of PhP1.00 per share, to Pesos: Seven Hundred Million (PhP700,000,000.00) divided into 700,000,000 shares with a par value of PhP1.00 per share.[4]

On 6 June 2006, the AoI (2nd Paragraph of Article SEVENTH) and By-laws (2nd Paragraph of Section 1 Article 1) of ASFII were amended to include the phrase "[*n]o stockholders of any class shall be entitled to any pre-emptive right to purchase, subscribe for, or receive any part of the shares of the corporation, whether issued from its unissued capital or its treasury stock*."[5]

On 23 October 2006, ASFII launched an Initial Public Offering of One Hundred Thirty Four Million (PhP134,000,000.00) worth of common shares, representing 25.04% of its issued and outstanding capital stock, at an offer price of PhP1.35 per share.[6]

In 2009, Appellants Hedy S.C. Yap-Chua (Yap-Chua), Harvest All Investment Limited, Victory Fund Limited, and Bondeast Private Limited (the "Appellants") subscribed to shares in ASFII. In the same year, Appellant Yap-Chua was elected as a member of the Board of Directors (the "Board") of ASFII.[7]

In 2011, ASFI conducted another Stock Rights Offering (SRO) where it offered a total of 272,267,965 shares from unissued capital stock

---

[2] *Ibid*, Article SEVENTH; see also the Complaint dated 5 November 2020, par. 7
[3] Complaint dated 5 November 2020, par. 9
[4] *Ibid*. par. 12
[5] *Ibid*. par. 14
[6] *Ibid*. par. 14
[7] Answer dated 10 June 2021, Par. 3.5

to fund its expansion and operational requirements ("the 2011 SRO"). Appellants participated in the 2011 SRO which resulted in the increase of their combined shareholdings in ASFII to 34.4%.[8]

On 5 May 2014, ASFII issued 430,286,226 shares to Strongoak, Inc. (Strongoak) through a public placement (the "2014 Private Placement") which resulted in Strongoak owning 28.69% of its total issued capital stock, and immediately becoming the second largest stockholder of the company.[9] Strongoak's offer to subscribe to the 430,286,226 ASFII shares was accepted by the Board, which considered the same as a potential capital-raising opportunity[10] and was approved by the shareholders during the Annual Stockholders' meeting held on 16 June 2014. The listing application of ASFII of the 430,286,226 common shares subject to the 2014 Private Placement was subsequently approved by the PSE.[11] No tender offer was conducted in relation to this acquisition.[12]

The AoI of ASFII underwent several amendments, specifically the provision on authorized capital stock, such that by 31 December 2013, it had an authorized capital stock of Pesos: One Billion Five Hundred Million (PhP1,500,000,000.00) divided into 1,500,000,000 shares with a par value of PhP1.00 per share.[13]

On 17 February 2015, the Board of ASFII approved (a) the increase in the authorized capital stock of the corporation from Pesos: One Billion Five Hundred Million (PhP1,500,000,000.00) divided into 1,500,000,000 shares with a par value of PhP1.00 per share, to Pesos: Three Billion (PhP3,000,000,000.00) divided into 3,000,000,000 shares with a par value of PhP1.00 per share to fund the planned expansions and operational requirements of the corporation,[14] and (b) the conduct of an SRO (the "2015 SRO") of up to 1 Billion common shares which will be taken from such increase, by way of pre-emptive rights offering to eligible common shareholders of the company at the proportion of one (1) rights share for every one and one-half (1.50) existing common shares held as of record date.[15]

---

[8] *Ibid*. pars. 3.6 and 3.7
[9] *Id*. Pars. 18 and 19
[10] Answer dated 10 June 2021, Par. 3.8
[11] *Ibid*. par. 3.11; Exhibits "3" and "4"
[12] Complaint, par. 20; Answer, par. 1.5
[13] *Id*, par.16
[14] Answer dated 10 June 2021, Pars. 3.13 to 3.15
[15] *Ibid*. pars. 3.14 and 3.16

Strongoak committed to subscribe to its Entitlement Shares and to all unsubscribed Rights Shares remaining after the second round of the Rights Offer.[16]

On 28 October 2015, the Commission approved ASFII's application for amendment of its AoI effecting an increase in its authorized capital stock to Pesos: Three Billion (PhP3,000,000,000.00) divided into 3,000,000,000 shares with a par value of PhP1.00 per share. Consequently, Strongoak acquired 952,479,638 common shares from the 1,000,000,000 common shares of ASFII which was offered under the 2015 SRO. This resulted in Strongoak owning 1,382,765,864 common shares, representing 55.32% of the total issued and outstanding common shares of ASFII.[17] No tender offer was conducted in relation to this acquisition.[18]

In the Assailed Decision, the MSRD did not pass upon the matters relating to the possible violation of Section 19 of the Securities Regulation Code ("SRC")[19] and its Implementing Rules and Regulations (IRR), and proceeded to dismiss the Complaint on the basis of a finding that the Appellants' cause of action has prescribed, and that Appellants are guilty of forum shopping.

Hence, the instant Appeal.

On 14 September 2022, ASFII filed its Comment/Opposition praying for the dismissal of the Appeal. ASFII argued that the MSRD did not err in finding that (a) a mandatory tender offer is not applicable/required in the subject transactions; (b) Appellants committed forum shopping; and (c) Appellants' cause of action has prescribed.

ISSUES

(A) Whether the Appellants' cause of action has already prescribed;

(B) Whether Appellants violated the rule against forum shopping; and

---

[16] *Ibid*. par. 3.20
[17] *Ibid*. par. 3.26; see also Complaint, par. 22
[18] Complaint, par. 23; Answer, par. 1.8
[19] Republic Act (RA) No. 8799

(C) Whether ASFII violated Section 19 of the SRC and its IRR.

RULING

The Appeal is impressed with merit.

A. The cause of action of the Appellants is not yet barred by prescription.

In the Assailed Decision, the MSRD held that Appellants' cause of action has already prescribed since their Verified Complaint was filed beyond the five (5) year period provided for under Section 62 of the SRC. The MSRD agreed with ASFII that the Appellants' cause(s) of action relating to the 2014 Private Placement and the 2015 SRO accrued on 5 May 2014 and 6 November 2016, respectively, which are the dates when they were publicly disclosed through SEC Form 17-C. Considering that the Appellants filed their Verified Complaint only on 16 November 2020, the MSRD ruled that their cause of action has already prescribed.[20] While the MSRD took cognizance of the fact that the Appellants filed with the Office of the Chairperson a complaint letter on 5 October 2018, it posited that such filing did not toll the prescriptive period because under the 2016 Rules of Procedure of the Securities and Exchange Commission (the "2016 Rules"), it is the filing of a verified complaint that triggers the commencement of an adjudicative action. [21]

In its Comment/Opposition, ASFII agreed with the finding of the MSRD that Appellants' cause of action already prescribed, and maintained that the Letter-Complaint dated 04 October 2018 did not toll the running of the prescriptive period provided under Sec. 62.2 of the SRC since the same was not verified.[22]

Considering that what Appellants seek to implement and enforce in the instant case is Section 19 of the SRC, Section 62.2 of the SRC is controlling, to wit:

> "No action shall be maintained to enforce any liability created under any other provision of this Code unless brought within two (2) years after the discovery of the facts constituting the

[20] Decision, pages 8 and 9
[21] *Ibid*
[22] Comment/Opposition, par. 51

> cause of action and within five (5) years after such cause of action accrued."

The afore-quoted provision does not require a verified complaint to commence an action for the enforcement of liability arising from a violation of SRC provisions. The reason for this lies in the fact that in implementing the provisions of the SRC, the Commission is essentially performing a regulatory function which involves the exercise of authority to investigate or supervise the activities of persons to ensure compliance with the requirements of the law, and related rules and regulations, and to impose sanctions for violations thereof.[23]

In the case of *Provident International Resources Corp. vs. Venus,*[24] the Supreme Court explained the nature and extent of the regulatory powers of this Commission, thus:

> "It can be said that the SEC's regulatory authority over private corporations encompasses a wide margin of areas, touching nearly all of a corporation's concerns. <u>This authority more vividly springs from the fact that a corporation owes its existence to the concession of its corporate franchise from the state. Under its regulatory responsibilities, the SEC may</u> pass upon applications for, or may suspend or revoke (after due notice and hearing), certificates of registration of corporations, partnerships and associations (excluding cooperatives, homeowners' association, and labor unions); compel legal and regulatory compliances; conduct inspections; and impose fines or other penalties for violations of the Revised Securities Act, as well as implementing rules and directives of the SEC, <u>such as may be warranted</u>." (Emphasis supplied)

Under the SRC, the Commission's regulatory function may be carried out *motu proprio* or pursuant to a complaint, verified or otherwise, filed with it. If a complaint is filed with the Commission to enforce specific rights which are anchored on non-compliance with the provisions of the SRC, the same is considered an adjudicative action under the 2016 Rules and is required, as a general rule, to be verified. However, if a complaint simply alleges violation of the SRC and seeks the imposition of the appropriate penalties, the same can nonetheless be taken cognizance of by the Commission, and be used as a basis in the

---

[23] Section 5(d) and (f) of RA No. 8799
[24] G.R. No. 167041, June 17, 2008.

conduct of an investigation for possible administrative action. In all cases, however, considering that the proper implementation of the provisions of the SRC is paramount for the protection of the investing public, the Commission is, by law, duty-bound to investigate and act on <u>any complaint</u>, verified or otherwise, for violation of the SRC, especially if the one involved is a publicly-listed company. Thus, the fact that a complaint is not verified does not divest the Commission of the power and authority to take cognizance of the same and/or pursue an investigation to rule on the matter, and to impose the appropriate penalties if it finds that a violation has been committed.

Relative thereto, it bears emphasis that the determination of the matters or issues that are within the jurisdiction of the Commission is carried out through an administrative proceeding where the rules of procedure are not strictly applied,[25] and the quantum of evidence required is merely substantial evidence.[26]

Section 1-4(a) Rule I Part I of the 2016 Rules categorically provides for the standard that will be used in interpreting its provisions, thus:

> "**These rules shall be liberally construed and administered to promote public interest**, to secure a just, prompt, expeditious, and inexpensive determination of every action and proceeding before the Commission **and to carry out the objectives of the laws it is mandated to implement**." (Emphasis supplied)

---

[25] "At the outset, it bears stressing that the proceeding involved in the present case is administrative in nature. Although trial courts are enjoined to observe strict enforcement of the rules on evidence, the same does not hold true for administrative bodies. The Court has consistently held that technical rules applicable to judicial proceedings are not exact replicas of those in administrative investigations. Recourse to discovery procedures as sanctioned by the Rules of Court is then not mandatory for the OGCLS-BSP. Hence, We cannot subscribe to Norlina's tenacious insistence for the OGCLS-BSP to strictly adhere to the Rules of Court so as not to purportedly defeat her rights." (*Sibayan vs. Alda*, G.R. No. 233395, January 17, 2018)

[26] "The quantum of proof in administrative proceedings necessary for a finding of guilt is substantial evidence or such relevant evidence as a reasonable mind may accept as adequate to support a conclusion. The burden to establish the charges rests upon the complainant. The case should be dismissed for lack of merit if the complainant fails to show in a satisfactory manner the facts upon which his accusations are based. The respondent is not even obliged to prove his exception or defense. Given these precepts, we find that there is no substantial evidence to hold Conrado liable for grave misconduct." (*NBI vs. Najera*, G.R. No. 237522, June 30, 2020)

Moreover, Sec. 5-1 Rule I Part I of the 2016 Rules specifically grants the Commission the power and authority to suspend the application of the Rules to ensure the effective performance of its mandate, thus:

> "In the broader interest of justice and in order to best serve public interest, the Commission may, in any particular manner, exempt it from these Rules in exceptional cases and apply such suitable, fair and reasonable procedure to improve the delivery of public service and to assist the parties in obtaining a speedy and judicious disposition of cases."

The afore-quoted provisions of the 2016 Rules implement and spell out the policy that the performance of the mandate of the Commission is paramount and essential, and the 2016 Rules, in its entirety, should be considered and used as an effective and efficient tool to further the same. Hence, if at any time and in any proceeding the 2016 Rules prevent the Commission from performing its mandate, the Commission is not bound, and should not be bound by technicality, and it can exercise its power to suspend its application. This is consistent with the principle established in jurisprudence that a litigation is not a game of technicalities.[27]

In the instant case, the records show that the Appellants filed a Letter-Complaint on 04 October 2018, or about three (3) years after the conduct of the 2015 SRO, therein alleging that ASFII has violated the mandatory tender offer rule under Section 19 of the SRC. Considering the seriousness of the matters presented in the complaint, the MSRD should have immediately acted on the same by carrying out an independent investigation instead of simply ignoring the complaint for not being verified. The seriousness of the alleged violation which was potentially prejudicial not only to the minority shareholders but also to the investing public should have prompted the MSRD to (i) invoke the provisions in the 2016 Rules, which sanctions a liberal construction, and proceeded to determine the case on the merits instead of dismissing the same on technical grounds; or (ii) make an independent investigation on whether ASFII has violated the SRC, as this is a duty of the Commission.

---

[27] "The Rules of Court were conceived and promulgated to set forth guidelines in the dispensation of justice but not to bind and chain the hand that dispenses it, for otherwise, courts will be mere slaves to or robots of technical rules, shorn of judicial discretion. That is precisely why courts, in rendering justice have always been, as they in fact ought to be, conscientiously guided by the norm that on the balance, technicalities take a backseat to substantive rights, and not the other way around. As applied to [the] instant case, in the language of Justice Makalintal, technicalities "should give way to the realities of the situation." (*Pimentel vs. Adiao*, G.R. No. 222678, October 17, 2018)

Moreover, we find that *Securities and Exchange Commission vs. Interport Resources Corporation*[28] inapplicable as that case involved a criminal complaint for violation of the SRC which must be lodged, at the first instance, with the Commission. Granting ex gratia, that the said case is applicable, there is nothing therein which requires the Commission to take cognizance and act only on a verified complaint filed with it. The Supreme Court categorically ruled that actions for alleged violation of the SRC are commenced by the filing of a complaint, without qualification, thus:

> "The Court of Appeals held that under the above provision, a criminal **complaint** for violation of any law or rule administered by the SEC must first be filed with the latter. If the Commission finds that there is probable cause, then it should refer the case to the DOJ. Since petitioner failed to comply with the foregoing procedural requirement, the DOJ did not gravely abuse its discretion in dismissing his complaint in I.S. No. 2004-229.
>
> A criminal charge for violation of the Securities Regulation Code is a specialized dispute. Hence, it must first be referred to an administrative agency of special competence, i.e., the SEC. Under the doctrine of primary jurisdiction, courts will not determine a controversy involving a question within the jurisdiction of the administrative tribunal, where the question demands the exercise of sound administrative discretion requiring the specialized knowledge and expertise of said administrative tribunal to determine technical and intricate matters of fact. The Securities Regulation Code is a special law. Its enforcement is particularly vested in the SEC. Hence, all complaints for any violation of the Code and its implementing rules and regulations should be filed with the SEC. Where the complaint is criminal in nature, the SEC shall indorse the complaint to the DOJ for preliminary investigation and prosecution as provided in Section 53.1 earlier quoted." (Emphasis supplied)

On the basis of the foregoing, we find MSRD's strict reliance on Section 3-1 Rule III Part II, in relation to Section 4-1(a) Rule IV Part I of the 2016 Rules, as basis for ruling that Appellants' cause of action has already prescribed, improper. In this case, we find the instant action for alleged violation of Section 19 of the SRC and its IRR warrants a

---

[28] G.R. No. 135808, October 6, 2008

relaxation of the 2016 Rules, as it will facilitate implementation of the mandatory tender offer required by law for the protection of minority shareholders. Considering the seriousness of the alleged violation, we find the complaint filed on 04 October 2018 substantially compliant with the requirements of the 2016 Rules, therefore filed within the period prescribed under Section 62.2 of the SRC, and more importantly, sufficient in substance as to not preclude the Commission from acting on the same.

B. Appellants have not violated the rule against forum shopping

In the Assailed Order, the MSRD found the Appellants to have violated the rule against forum shopping, and cited such finding as additional ground to dismiss the Complaint. The MSRD specifically found that the reliefs prayed for by the Appellants in the Complaint, i.e., to void the Resolutions approving the SRO, similar with those in the cases pending with the Regional Trial Court (RTC) of Pasig.

The Commission does not agree with the MSRD.

There is forum shopping "*when a party repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other court.*"[29]

In *Zamora vs. Quinan*,[30] the Supreme Court held that the test to determine if the rule against forum shopping has been violated is whether the elements of *litis pendentia* or *res judicata* are present, to wit:

> To determine whether a party violated the rule against forum shopping, the most important factor to ask is whether the elements of *litis pendentia* are present, or whether a final judgment in one case will amount to res judicata in another; otherwise stated, <u>the test for determining forum shopping is whether in the two (or more) cases pending, there is identity of</u> parties, <u>rights or causes of action, and reliefs sought</u>.

---

[29] Heirs of Sotto vs. Palicte, G.R. No. 159691, February 17, 2014.
[30] G.R. No. 216139, November 29, 2017.

For its part, *litis pendentia* "refers to that situation wherein another action is pending between the same parties for the same cause of action, such that the second action becomes unnecessary and vexatious." For *litis pendentia* to exist, three (3) requisites must concur:

The requisites of *litis pendentia* are: (a) the identity of parties, or at least such as representing the same interests in both actions; (b) **the identity of rights asserted and relief prayed for**, **the relief being founded on the same facts**; and (c) **the identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other**.

On the other hand, res judicata or prior judgment bars a subsequent case when the following requisites are satisfied:

(1) the former judgment is final; (2) it is rendered by a court having jurisdiction over the subject matter and the parties; (3) it is a judgment or an order on the merits; (4) there is - between the first and the second actions - identity of parties, of subject matter, and of causes of action. (Emphasis supplied)

The prayer in the Complaint significantly reads as follows:

"WHEREFORE, PREMISES CONSIDERED, **it is most respectfully prayed that the private placement of Strongoak and stock rights offering in its favor resulting in its taking control of Alliance <u>be declared to have violated the provisions of the Securities Regulation Code</u>** and consequently declared null and void." (Emphasis supplied)

In support of the afore-quoted highlighted portion of the Appellants' prayer, we find in the Complaint the specific provision of the SRC that was allegedly violated, i.e., Section 19,[31] and the circumstances of such allegation.

The matter relating to the interpretation and application of Section 19 of the SRC is within the primary and exclusive jurisdiction of the Commission. Section 5.1(a) of the SRC, provides:

---

[31] Complaint, par. 26

> "Section 5. *Powers and Functions of the Commission* – 5.1. The commission shall act with transparency and shall have the powers and functions provided by this code, Presidential Decree No. 902-A, the Corporation Code, the Investment Houses law, the Financing Company Act and other existing laws. Pursuant thereto the Commission shall have, among others, the following powers and functions:
>
> (a) Have jurisdiction and supervision over all corporations, partnership or associations who are the grantees of primary franchises and/or a license or a permit issued by the Government;
>
> xxx xxx xxx
>
> (d) Regulate, investigate or supervise the activities of persons to ensure compliance;
>
> xxx xxx xxx
>
> (n) Exercise such other powers as may be provided by law as well as those which may be implied from, or which are necessary or incidental to the carrying out of, the express powers granted the Commission to achieve the objectives and purpose of these laws."

The determination of whether the mandatory tender offer rule provisions under the SRC applies and/or has been violated, based on given set of facts, is a function primarily lodged with the Commission. In the case of *Palawan Council for Sustainable Development vs. Ejercito Lim*[32], the Supreme Court (the "Court") discussed the nature of administrative adjudicatory power, thus:

> "Administrative agencies possess two kinds of powers, the quasi-legislative or rule-making power, and the quasi-judicial or administrative adjudicatory power. The first is the power to make rules and regulations that results in delegated legislation that is within the confines of the granting statute and the doctrine of non-delegability and separability of powers. [15] The issuance of the assailed A.O. No. 00-05, Resolution. No. 03-211 and the other issuances by the PCSD

[32] G.R. No. 183173, August 24, 2016.

> was in the exercise of the agency's quasi-legislative powers. The second is the power to hear and determine questions of fact to which the legislative policy is to apply and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law. The administrative body exercises its quasi-judicial power when it performs in a judicial manner an act that is essentially of an executive or administrative nature, where the power to act in such manner is incidental to or reasonably necessary for the performance of the executive or administrative duty entrusted to it." (Emphasis ours)

Further, the Supreme Court has consistently sustained the jurisdiction of the Commission over matters involving the interpretation and implementation of the SRC notwithstanding the presence of an intra-corporate dispute. In the case of *Securities and Exchange Commission vs. Subic Bay Golf and Country Club, Inc.,*[33] the Court categorically ruled that allegations of intra-corporate dispute do not deprive the Commission of its administrative and regulatory jurisdiction to determine if administrative violations have been committed, thus:

> "However, even though the Complaint filed before the Securities and Exchange Commission contains allegations that are intra-corporate in nature, it does not necessarily oust the Securities and Exchange Commission of its regulatory and administrative jurisdiction to determine and act if there were administrative violations committed.
>
> The Securities and Exchange Commission is organized in line with the policy of encouraging and protecting investments. It also administers the Securities Regulation Code, which was enacted to "promote the development of the capital market, protect investors, ensure full and fair disclosure about securities, [and] minimize if not totally eliminate insider trading and other fraudulent or manipulative devices and practices which create distortions in the free market." Pursuant to these policies, the Securities and Exchange Commission is given regulatory powers and "absolute jurisdiction, supervision and control over all corporations, partnerships' or associations ..."

x x x

[33] G.R. No. 179047, March 11, 2015.

> Thus, when Villareal and Filart alleged in their letter-complaint that SBGCCI and UIGDC committed misrepresentations in the sale of their shares, nothing prevented the Securities and Exchange Commission from taking cognizance of it to determine if SBGCCI and UIGDC committed administrative violations and were liable under the Securities Regulation Code. The Securities and Exchange Commission may investigate activities of corporations under its jurisdiction to ensure compliance with the law." (Emphasis supplied)

In *Roman, Jr. vs. Securities and Exchange Commission,*[34] the Court categorically ruled that the Commission retains the power to adjudicate matters involving the implementation of the SRC notwithstanding the fact that an intra-corporate issue was raised in the complaint, to wit:

> "Under the SRC, jurisdiction on matters stated under Section 5 of P.D. No. 902-A, which was originally vested in the SEC, has already been transferred to the RTC acting as a special commercial court. Despite the said transfer, however, the SEC still retains sufficient powers to justify its assumption of jurisdiction over matters concerning its supervisory, administrative and regulatory functions. In SEC v. Subic Bay Golf and Country Club, Inc. (SBGCCI) and Universal International Group Development Corporation (UIGDC), for instance, the Court affirmed the SEC's assumption of jurisdiction over a complaint, which alleged that SBGCCI and UIGDC committed misrepresentations in the sale of their shares. The Court held in the said case that nothing prevented the SEC from assuming jurisdiction to determine if SBGCCI and UIGDC committed administrative violations and were liable under the SRC despite the complaint having raised intra-corporate issues. It also ruled that the SEC may investigate activities of corporations to ensure compliance with the law.
>
> In ruling that way, the Court cited Sections 5 and 53 of the SRC as justifications, to wit:
>
> > SECTION 5. *Powers and Functions of the Commission*. — 5.1. The Commission shall act with transparency and shall have the powers and functions provided by

[34] G.R. No. 196329, June 1, 2016.

> this Code, Presidential Decree No. 902-A, the Corporation Code, the Investment Houses Law, the Financing Company Act, and other existing laws. Pursuant thereto the Commission shall have, among others, the following powers and functions:
>
> (a) Have jurisdiction and supervision over all corporations, partnerships or associations who are the grantees of primary franchises and/or a license or permit issued by the Government;
>
> x x x
>
> (d) Regulate, investigate or supervise the activities of persons to ensure compliance;
>
> x x x
>
> (n) Exercise such other powers as may be provided by law as well as those which may be implied from, or which are necessary or incidental to the carrying out of, the express powers granted the Commission to achieve the objectives and purposes of these laws.
>
> x x x
>
> SECTION 53. *Investigations, Injunctions and Prosecution of Offenses*. — 53.1. The Commission may, in its discretion, make such investigations as it deems necessary to determine whether any person has violated or is about to violate any provision of this Code, any rule, regulation or order thereunder, or any rule of an Exchange, registered securities association, clearing agency, other self-regulatory organization, and may require or permit any person to file with it a statement in writing, under oath or otherwise, as the Commission shall determine, as to all facts and circumstances concerning the matter to be investigated. x x x

<u>Beyond doubt, therefore, is the authority of the SEC to hear cases regardless of whether an action involves issues</u>

> cognizable by the RTC, provided that the SEC could only act upon those which are merely administrative and regulatory in character. In other words, the SEC was never dispossessed of the power to assume jurisdiction over complaints, even if these are riddled with intra-corporate allegations, if their invocation of authority is confined only to the extent of ensuring compliance with the law and the rules, as well as to impose fines and penalties for violation thereof; and to investigate even *motu proprio* whether corporations comply with the Corporation Code, the SRC and the implementing rules and regulations." (Emphasis supplied)

In the instant case, while it may be true that the Appellants prayed for the nullification of the 2014 Private Placement and 2015 SRO, the main relief upon which the said prayer was anchored is the declaration that ASFII has violated Section 19 of the SRC, to wit:

> "WHEREFORE, PREMISES CONSIDERED, **it is most respectfully prayed that the private placement of Strongoak and stock rights offering in its favor resulting in its taking control of Alliance be declared to have violated the provisions of the Securities Regulation Code** and consequently declared null and void." (Emphasis supplied)

The highlighted phrase in the afore-quoted prayer of Appellants is a matter within the primary and exclusive jurisdiction of the Commission.

On account thereof, and applying the elements and parameters established in jurisprudence, we hold that the MSRD committed a reversible error in finding that Appellants were guilty of forum shopping as the requirement on the identity of reliefs could not possibly be present in the instant case. The interpretation and implementation of Section 19 of the SRC, as well as the exercise of the power to impose the appropriate sanction on the basis of a finding of violation thereof, are matters that are within the primary and exclusive jurisdiction of the Commission. This explains why the matter relating to Section 19 of the SRC was not presented in the cases pending with the RTC of Pasig.

C. ASFII violated Section 19 of the SRC and its IRR

At the outset, the Commission notes that the MSRD, after finding that the Appellants were guilty of forum shopping, and their cause of action has already prescribed, no longer ruled on the substantive aspect of the Complaint, *i.e.* whether the 2014 Private Placement and 2015 SRO are covered by the mandatory tender offer rule under Section 19 of the SRC, and whether ASFII violated the same.

Given the foregoing discussions, this Commission will now proceed to pass upon the matter on the alleged violation of Section 19 of the SRC by ASFII, as presented in the Complaint. This is consistent with the jurisprudential rule that a case elevated on appeal is opened and subjected to the review of the appellate body. This principle was emphasized in *United Coconut Planters Bank vs. Spouses Uy,* citing the case of *Heirs of Alcaraz vs. Republic of the Philippines*, where the Supreme Court categorically ruled that:

> "In any event, when petitioners interposed an appeal to the Court of Appeals, **the appealed case was thereby thrown wide open for review** by that court, **which is thus necessarily empowered to come out with a judgment as it thinks would be a just determination of the controversy**. Given this power, the **appellate court has the authority to either affirm, reverse or modify the appealed decision** of the trial court. **To withhold from the appellate court its power to render an entirely new decision would violate its power of review** and would, in effect, render it incapable of correcting patent errors committed by the lower courts."[35] (Emphasis supplied)

In the Complaint, the Appellants alleged that ASFII violated Section 19 of the SRC when it conducted the 2014 Private Placement and 2015 SRO which resulted in Strongoak's acquisition of 55.32% of the ASFII's issued and outstanding capital stock.

In its Answer dated 10 June 2021, ASFII maintained that the 2014 Private Placement is not covered by Section 19 of the SRC because the ownership of Strongoak in ASFII as a consequence thereof, i.e., 28.69% did not breach the 35% threshold prescribed under Rule 19.2A;[36] and even if the 35% threshold was met, the transaction is nonetheless exempt as what was purchased came from the unissued capital stock.[37] As

---

[35] G.R. No. 204039, January 10, 2018.
[36] Answer, par. 4.5
[37] *Ibid*. par. 4.6

regards the 2015 SRO, ASFII equally maintained that the same is not covered by Section 19 of the SRC notwithstanding the fact that it resulted in Strongoaks's ownership of 55.32% of the ASFII's issued and outstanding capital stock, because the shares subject thereof came from the increase in the authorized capital stock of the corporation.

We find for the Appellants.

Section 19 of the SRC provides:

> "Section 19. *Tender Offers*. – Any person or group of persons acting in concert who intends to acquire at least 15% of any class of any equity security of a listed corporation of any class of any equity security of a corporation with assets of at least fifty million pesos (50,000,000.00) and having two hundred (200) or more stockholders at least one hundred shares each or who intends to acquire at least thirty percent (30%) of such equity over a period of twelve months (12) shall make a tender offer to stockholders by filling with the Commission a declaration to that effect; and furnish the issuer, a statement containing such of the information required in Section 17 of this Code as the Commission may prescribe. Such person or group of persons shall publish all request or invitations or tender offer or requesting such tender offers subsequent to the initial solicitation or request shall contain such information as the Commission may prescribe, and shall be filed with the Commission and sent to the issuer not alter than the time copies of such materials are first published or sent or given to security holders.

Section 19.2 (A) of the SRC-IRR provides:

> "A. Any person or group of persons acting in concert, who intends to acquire thirty five percent (35%)1 or more of equity shares in a public company shall disclose such intention and contemporaneously make a tender offer for the percent sought to all holders of such class, subject to paragraph (9)(E) of this Rule.
>
> In the event that the tender offer is oversubscribed, the aggregate amount of securities to be acquired at the close of such tender offer shall be proportionately

distributed across both selling shareholder with whom the acquirer may have been in private negotiations and minority shareholders.

B. Any person or group of persons acting in concert, who intends to acquire thirty five percent (35%)1 or more of equity shares in a public company in one or more transactions within a period of twelve (12) months, shall be required to make a tender offer to all holders of such class for the number of shares so acquired within the said period.

C. **If any acquisition of even less than thirty five percent (35%) would result in ownership of over fifty one percent (51%) of the total outstanding equity securities of a public company, the acquirer <u>shall be required to make a tender offer</u> under this Rule for all the outstanding equity securities to all remaining stockholders of the said company at a price supported by a fairness opinion provided by an independent financial advisor or equivalent third party**. The acquirer in such a tender offer shall be required to accept any and all securities thus tendered. (Emphasis supplied)

The concept of a "tender offer" was discussed by the Supreme Court in the case of *Osmeña III vs. Social Security System,*[38] to wit:

> "For perspective, a tender offer is a publicly announced intention by a person acting alone or in concert with other persons to acquire equity securities of a public company, i.e., one listed on an exchange, among others. The term is also defined as "an offer by the acquiring person to stockholders of a public company for them to tender their shares therein on the terms specified in the offer. Tender offer is in place to protect the interests of minority stockholders of a target company against any scheme that dilutes the share value of their investments. It affords such minority shareholders the opportunity to withdraw or exit from the company under

[38] G.R. No. 165272, September 13, 2007.

> reasonable terms, a chance to sell their shares at the same price as those of the majority stockholders."

In *Cemco Holdings, Inc. vs. National Life Insurance Co. of the Philippines, Inc.*[39] (Cemco Case), the Supreme Court explained the purpose of the tender offer under Section 19 of the SRC, thus:

> "The legislative intent of Section 19 of the Code is **to regulate activities relating to acquisition of control of the listed company** and for the purpose of protecting the minority stockholders of a listed corporation. Whatever may be the method by which control of a public company is obtained, either through the direct purchase of its stocks or through an indirect means, mandatory tender offer applies. As appropriately held by the Court of Appeals:
>
>> The petitioner posits that what it acquired were stocks of UCHC and not UCC. By happenstance, as a result of the transaction, it became an indirect owner of UCC. We are constrained, however, to construe ownership acquisition to mean both direct and indirect. **What is decisive is the determination of the power of control**. The legislative intent behind the tender offer rule makes clear that **the type of activity intended to be regulated is the acquisition of control** of the listed company through the purchase of shares. Control may [be] **effected through a direct and indirect acquisition** of stock, and when this takes place, irrespective of the means, a tender offer must occur. The bottom-line of the law is to give the shareholder of the listed company the opportunity to decide whether or not to sell in connection with a transfer of control." (Emphasis ours)

It is clear from the afore-quoted doctrinal pronouncements of the Supreme Court that **what is important for purposes of Rule 19.2.A of the SRC-IRR is to determine, at the outset, if the intended acquisition will result in a change of control** of a listed company. If in the affirmative, Section 19.2.A of the 2003 Amended IRR applies. The foregoing is clear in the afore-quoted ruling where the Court emphasized that "***(w)hat is decisive is the determination of the power of control.***"

---

[39] G.R. No. 171815, August 7, 2007.

Control is essential for purposes of Section 19 of the SRC because it is intended, *inter alia*, to protect the minority investors and afford them the opportunity to withdraw or exit from the company under reasonable terms should they want to, based on their assessment of the entity intending to acquire control. Hence, while the SRC-IRR recognizes certain transactions that are exempt from the mandatory tender offer rule, the same is subjected to the condition that the acquisition does not result in the ownership by the purchaser of more than 50% of the shares of the target company.[40]

It bears emphasis that pursuant to the doctrine in the Cemco Case, if the intended acquisition of shares will result in the change of control of the listed company, a tender offer is mandatory and Rule 19.2.A SRC-IRR, as well as **the means by which control is acquired**, e.g., direct purchase of stocks or indirect means, **will not matter because both will be subject to and governed by the rules on tender offer**. The Court emphasized that it was the intent of Congress to have the tender offer rule regulate **the type of activity that will be used in acquiring control** of the listed company, and **such activity may either be a direct purchase of stocks or an indirect acquisition of stock**.

The acquisition of control should not be confused with the means of achieving the same. The matter relating to the direct or indirect acquisition of stock pertains to the latter, while the resulting control of the target corporation by the prospective purchasers of stock pertains to the former. ***Apriori*, the issue on whether there will be a change of control must be determined**. If the acquisition will result in a change

---

[40] Section 19.3(A) of the SRC-IRR provides:

"A. The mandatory tender offer requirement shall not apply to the following:

i. any purchase of shares from the unissued capital stock provided that the acquisition will not result to a fifty percent (50%) or more ownership of shares by the purchaser;
ii. any purchase of shares from an increase in authorized capital stock;
iii. purchase in connection with foreclosure proceedings involving a duly constituted pledge or security arrangement where the acquisition is made by the debtor or creditor;
iv. purchases in connection with privatization undertaken by the government of the Philippines;
v. purchases in connection with corporate rehabilitation under court supervision;
vi. purchases through an open market at the prevailing market price;
vii. merger or consolidation.

in control, then the manner of acquisition, i.e., direct or indirect acquisition of shares, will perforce be subject to the tender offer rule.

Considering that the 2015 SRO would result, as it has indeed resulted, in the ownership by Strongoak of 55.32% of the ASFII's issued and outstanding capital stock, we hold that Section 19 of the SRC and the SRC-IRR should be applied in the instant case; and the failure of ASFII to conduct a mandatory tender offer constituted a violation thereof.

In the instant case, we take cognizance of the admission made by ASFII relating to its acceptance of Strongoak's offer to subscribe to 430,286,226 shares, which was equivalent to 28.69% of its outstanding shares in relation to the 2014 Private Placement; and to subscribe to an additional 952,479,638 common shares from the 1,000,000,000 common shares of ASFII which resulted in its ownership of 55.32% of issued and outstanding capital stock, all in response to its need to raise capital.[41] From this perspective, the 2014 Private Placement and 2015 SRO which facilitated the acquisition by Strongoak of 55.32% of the ASFII's issued and outstanding capital stock appears to be a product of a scheme that will enable Strongoak to take control of ASFII. We find that the actions taken relating to the purchase by Strongoak of ASFII shares in the 2014 Private Placement and 2015 SRO were carefully designed to work around the mandatory tender offer rule.

Relative to the foregoing, a review of the relevant Annual Financial Statements (AFS)[42] of ASFII significantly shows that the net cash of the company in 2014 was mainly from the issuance of shares to Strongoak which was used in furtherance of its usual operation, but nothing therein showed business expansion or significant business acquisitions. The 2014 AFS also showed that during the said year, ASFII started to incur losses amounting to US$17,076,504 as a consequence of management's decision to take a prudent and conservative position to recognize non-recurring expenses, i.e., inventory write-down, provision for impairment in the value of vessels and receivables. Moreover, ASFII's Statement of Income bears out a significant increase in "Selling and Administrative Expenses" from the years 2013-2014 by US$18,274,674 or 182.47%, due to inventory write-down and obsolescence, impairment loss on fishing vessels, and doubtful account expense. Also, the relevant AFS of the ASFII shows that there were no business expansions and acquisitions in 2015, and that the proceeds from the issuance of shares remained in cash account amounting to US$15,168,959 as of 31 December 2015. Finally,

[41] *Answer*. Pars 3.7, 3.10, 3.12, 3.13, and 3.26
[42] AFS 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019 and 2020

ASFII's revenue and gross profit were decreased by 11.78% and 49.15%, respectively, in the year 2016; and there were similarly no business expansion and significant business acquisition during the same year.

The foregoing facts which were disclosed by ASFII in its AFS belie the purpose for the series of increase of its authorized capital stock that were applied for and approved by the Commission, i.e., to implement expansion plans and for operational requirements. If at all, the financials of ASFII show that the series of increases of its authorized capital stock, and the 2014 Private Placement and 2015 SRO were implemented to facilitate the entry of Strongoak and its acquisition of control over the company, to the detriment of the minority shareholders. This clearly required the conduct of a mandatory tender offer under Section 19 of the SRC, which ASFII failed to comply with.

It should be emphasized that while the shares acquisition of Strongoak came from exempt securities, Rule 19.3.1 of the SRC IRR expressly qualifies the enumeration of the exceptions to the mandatory tender offer rule by the phrase "*unless the acquisition of equity securities is intended to circumvent or defeat the objectives of the tender offer rules.*" Under the afore-quoted provision of the Rules, an acquisition of equity securities which are considered by the Rules as exempt will nonetheless be subject to the mandatory tender offer rule if, based on the evidence, the same was carried out to circumvent the law and the rules.

On the basis of the foregoing, and in the context of the purpose of a mandatory tender offer which is to protect minority shareholders, we hold that the aggregate acquisitions by Strongoak of ASFII shares which is equivalent to 55.32% of the latter's issued and outstanding capital stock are outside the ambit of the exceptions provided under Rule 19.3.A of the SRC-IRR, notwithstanding that they came from the increase in authorized capital stock and unissued capital stock. Any person who circumvents the law, direct or otherwise, should not be allowed to benefit from the same.

Relative thereto, Section 71.2 of the SRC provides:

> "71.2**. Every contract made in violation of any provision of this Code or of any rule or regulation thereunder**, and every contract, including any contract for listing a security on an Exchange heretofore or hereafter made, the performance of which involves the violation of, or the continuance of any

relationship or practice in violation of, any provision of this Code, or any rule or regulation thereunder, **shall be void**:

(a) **As regards the rights of any person who, in violation of any such provision, rule or regulation, shall have made or engaged in the performance of any such contract**, and

(b) **As regards the rights of any person who, not being a party to such contract, shall have acquired any right thereunder with actual knowledge of the facts by reason of which the making or performance of such contract was in violation** of any such provision, rule or regulation." (Emphasis supplied)

Further, Section 5(f) of the SRC provides:

"SECTION 5. Powers and Functions of the Commission. — 5.1. The Commission shall act with transparency and shall have the powers and functions provided by this Code, Presidential Decree No. 902-A, the Corporation Code, the Investment Houses Law, the Financing Company Act and other existing laws. Pursuant thereto **the Commission shall have**, among others, **the following powers** and functions:

(a) **Impose sanctions for the violation of laws and the rules, regulations** and orders issued pursuant thereto;"

Under Section 71.2 of the SRC, the proper sanction for contracts made in violation of any provision of the SRC or of any rule or regulation is the voiding or nullification thereof.[43]

---

[43] This provision has a counterpart in the United States Code[43] and United States Securities and Exchange Act of 1934[43], to wit:

"Every contract made in violation of any provision of this chapter or of any rule or regulation thereunder, and every contract (including any contract for listing a security on an exchange) heretofore or hereafter made, the performance of which involves the violation of, or the continuance of any relationship or practice in violation of, any provision of this chapter or any rule or regulation thereunder, shall be void:

Relative to the above-quoted provision of the SRC, Section 19.13 of the SRC-IRR provides for the pertinent sanction in violation of the tender offer rule, to wit:

> "13. Violation
>
> **If there shall be violation of this Rule by pursuing a purchase of equity shares of a public company at threshold amounts without the required tender offer, the Commission, upon complaint, may nullify the said purchase and direct the holding of a tender offer**. This shall be without prejudice to the imposition of other sanctions under the Code." (Emphasis supplied)

In the context of the declared state policies under the SRC, and the effects of any violation of the provisions thereof to the market and on investors, Section 71.2 of the SRC and Section 19.3 of the 2003 Amended IRR goes to the extent of categorically declaring "*every contract made in violation of any provision of this Code or of any rule or regulation thereunder*" as void, and expressly authorizing the Commission to effect the voiding of the same. In the exercise by the Commission of its regulatory powers to administer and implement the provisions of the SRC,[44] to regulate, investigate, and supervise regulated entities to ensure compliance,[45] and to impose sanctions for violation,[46] the determination of whether an act or transaction violates the SRC is a matter that is within the exclusive jurisdiction of the Commission. In relation thereto, Section 71.2 of the SRC and Section 19.3 of the SRC IRR expressly authorize and empower the Commission to declare contracts and transactions void after a determination that the same were made in violation of the SRC.

> (1) as regards the rights of any person who, in violation of any such provision, rule, or regulation, shall have made or engaged in the performance of any such contract, and
>
> (2) as regards the rights of any person who, not being a party to such contract, shall have acquired any right thereunder with actual knowledge of the facts by reason of which the making or performance of such contract was in violation of any such provision, rule, or regulation."

[44] Section 4 of the SRC.
[45] Section 5(d) of the SRC.
[46] Section 5(f) of the SRC.

Moreover, transactions in securities as commonly conducted upon securities exchanges and over-the-counter markets are effected with a national public interest which makes it necessary to provide for regulation and control of such transactions, and of practices and matters related thereto.[47] The policies that the securities laws have been said to promote include such socially-directed objectives as the protection of investors, the elimination of manipulative and deceptive practices, the promotion of full disclosure, the encouragement of high ethical standards, and ***the provision of effective sanctions for violation***.[48]

Considering the various novel irregular schemes and devices employed to deceive the public, legislators broadly drew the scope of the securities law, e.g., the SRC, in order to achieve its goal of investor protection.[49] In effect, the Commission, as the regulatory and supervisory agency mandated to ensure compliance with said law is given a wide latitude of authority, power, and discretion to perform its duties and responsibilities including, among others, the power to declare void a contract entered into in violation of the SRC.

It is thus important to look into the standards and parameters provided under existing jurisprudence, applicable principles, and best practices recognized and adopted both locally and by foreign jurisdictions, which will justify the voiding of contracts and/or transactions for having been entered into in violation of the SRC and its IRR.

In the *Cemco* case, the Court recognized and upheld the exercise by the Commission of its powers under the SRC, thus:

> "In taking cognizance of respondent's complaint against petitioner and eventually rendering a judgment which ordered the latter to make a tender offer, the SEC was acting pursuant to Rule 19(13) of the Amended Implementing Rules and Regulations of the Securities Regulation Code, to wit:
>
> 13. Violation
>
> **If there shall be violation of this Rule by pursuing**

[47] Section 2 of the Exchange Act expressly sets forth the legislative purpose and perceived need for securities regulation.
[48] Elaine A. Welle, Freedom of Contract and the Securities Laws: Opting Out of Securities Regulation by Private Agreement, 56 Wash. & Lee L. Rev. 519 (1999).
[49] SEC v. C.M. Joiner Leasing Corp., 320 U.S. 344, 351 (1943).

> **a purchase of equity shares of a public company at threshold amounts without the required tender offer, the Commission, upon complaint, may nullify the said acquisition and direct the holding of a tender offer**. This shall be without prejudice to the imposition of other sanctions under the Code.

The foregoing rule emanates from the SEC's power and authority to regulate, investigate or supervise the activities of persons to ensure compliance with the Securities Regulation Code, more specifically the provision on mandatory tender offer under Section 19 thereof.

xxx xxx xxx

<u>The foregoing provision bestows upon the SEC the general adjudicative power which is implied from the express powers of the Commission or which is incidental to, or reasonably necessary to carry out, the performance of the administrative duties</u> entrusted to it. <u>As a regulatory agency, it has the incidental power to conduct hearings and render decisions fixing the rights and obligations of the parties. In fact,</u> **<u>to deprive the SEC of this power would render the agency inutile, because it would become powerless to regulate and implement the law</u>**. As correctly held by the Court of Appeals:

We are nonetheless convinced that the SEC has the competence to render the particular decision it made in this case. <u>A definite inference may be drawn from the provisions of the SRC that</u> **<u>the SEC has the authority not only to investigate complaints of violations of the tender offer rule, but to adjudicate certain rights and obligations of the contending parties and grant appropriate reliefs in the exercise of its regulatory functions under the SRC</u>**. Section 5.1 of the SRC allows a general grant of adjudicative powers to the SEC which may be implied from or are necessary or incidental to the carrying out of its express powers to achieve the objectives and purposes of the SRC. We must bear in mind in interpreting the powers and functions of the SEC that the law has made the SEC primarily a regulatory body with the incidental power to conduct administrative hearings and make decisions. A regulatory body like the SEC may conduct hearings in the exercise of its regulatory powers, and if the case involves violations or conflicts in connection with the performance of its regulatory functions, it will have the duty and authority to resolve the dispute for the best interests of the public." (Emphasis supplied)

Prior to the enactment of the SRC, the Supreme Court has confirmed that the Commission can nullify contracts that are violative of the Batas Pambansa Blg. 178 (Revised Securities Act).

In the early case of *Figueroa vs. SEC,*[50] the issue posed was whether the Commission can declare null and void a contract entered into between Figueroa and Phil-Finance which was entered into when the latter was placed under receivership of the Commission. Figueroa contended that such power and authority are reserved by law only to the regular courts and not to administrative bodies like the SEC. The Supreme Court held that considering the irregularities attendant in the consummation of the said contract, the <u>Commission, under Section 6 (d), sub-par (2) of PD 902-A, has the power to overrule or revoke previous acts of the management and in nullifying the contract that was entered into, thus:</u>

> "Under paragraph 6(d), sub-par. (2) of P.D. No. 902-A, as amended, as above adverted to, the management committee or receiver may overrule or revoke previous acts of the management as it did in this case. Petitioner may not complain that she was denied due process. Even before the Bengzon Law Offices asked the respondent SEC to nullify the contract, the petitioner was informed of the infirmities in the said contract. Instead of justifying or explaining such infirmities, petitioner insisted that it is valid. And <u>when respondent SEC adopted the resolution of August 19, 1986, thereby nullifying the contract, petitioner was afforded the opportunity to be heard when she filed a request for reconsideration which was duly considered by the SEC sitting en banc but the petition was denied and the nullification of the contract was upheld</u>.
>
> What the law prohibits is not the absence of previous notice, but the absolute absence thereof and lack of opportunity to be heard. Where a party was given a chance to be heard with

[50] G.R. No. 76627, (June 27, 1988).

respect to his motion for reconsideration, there is sufficient compliance with the requirements of due process.

The Court, therefore, finds no grave abuse of discretion on the part of respondent SEC in nullifying the contract that was entered into in this case." (Emphasis supplied)

Moreover, in *B.H. Chua Securities Corp. vs. Sia-Uy,*[51] the Supreme Court sustained the findings of the SEC En Banc that the transactions between the petitioner and private respondent were void pursuant to Section 53 (b)[52] in relation to Section 19 of the Revised Securities Act when the private respondent acted as a salesman of securities without the necessary license. In such case, the investment contracts entered into by the parties were considered null and void, thus:

"**We sustain the findings of the SEC En Banc that the transactions between petitioner and private respondent are void pursuant to Section 53 (b) in relation to Section 19 of the RSA**. Go acted as a salesman of securities without the necessary license as required by Section 19 of the RSA. **The CA correctly held that factual findings of quasi-judicial agencies like the SEC, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect but at times even finality if such findings are supported by substantial evidence**.

xxx xxx xxx

More importantly, we rule that refund of the amounts invested by private respondent is a necessary consequence of the nullity of the Marginal Account executed between petitioner and private respondent. A void or inexistent contract has no force and effect from the very beginning. A void contract is equivalent to nothing and is absolutely wanting in civil effects. Thus, if a void contract has already

---

[51] G.R. No. 202485 (Notice), February 22, 2017.
[52] Section 53. Validity of Contracts. —
xxx xxx xxx
(b) Every contract made in violation of any provision of this Act or of any rule or regulation thereunder, and every contract, including any contract for listing a security on an exchange heretofore or hereafter made, the performance of which involves the violation of, or the continuance of any relationship or practice in violation of, any provision of this Act, or any rule or regulation thereunder, shall be void: xxx xxx xxx"

> been performed, the restoration of what has been given is in order. This principle springs from Article 22 of the New Civil Code which states that "every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same x x x." Hence, the restitution of what each party has given is a consequence of a void and inexistent contract. The rule is settled that the declaration of nullity of a contract which is void ab initio operates to restore things to the state and condition in which they were found before its execution." (Emphasis supplied)

It bears emphasis that notwithstanding the overall repeal of the Revised Securities Act by the enactment of the SRC, the principle behind Section 53(b) of the former was reenacted in Sec. 71.2 of the SRC. Consequently, the authority of the SEC to declare a contract void whenever provisions in the SRC or of any rule or regulation are violated is **still in force**, as held in the aforementioned jurisprudence.

It is on the basis of the foregoing that the Commission is exercising the power to nullify the ASFII shares acquired by Strongoak in circumvention of the mandatory tender offer rule, effected through the 2014 Private Placement and 2015 SRO.

D. The established principles on corporate governance and international best practices are recognized under the Revised Corporation Code as basis for the Commission's actions or decisions.

The Revised Corporation Code[53] recognizes the importance of considering and adopting the best practices of company registrars and securities regulators in foreign jurisdictions as a strategy of improving productivity and competitiveness in the capital market, and as a tool in efficiently implementing the objectives of the law.[54] Consistent with the

---

[53] RA No. 11232

[54] Section 179(d) of the RCC provides that "*The Commission shall have the power and authority to: xxx (d) Promote corporate governance and the protection of minority investors, through, among others, the issuance of rules and regulations consistent with international best practices.*"

foregoing, the Commission has taken into consideration the policies and best practices of recognized regulators abroad in relation to takeovers.

In Southeast Asia, a number of jurisdictions have adopted a regulatory framework that recognizes that it is impracticable to devise rules in sufficient details to cover all circumstances that may arise in a takeover. Hence, their takeover codes require strict observance of the letter and spirit thereof, especially in circumstances not covered by any rules, demand good faith in the exercise of the rights of control, and prescribes the provision to the shareholders of sufficient information, advice and time required to reach an informed decision on an offer.[55]

In Australia, the takeover rules[56] reflect and embody the policies, among others, that the acquisition of control of an entity which is subject of the takeover takes place in an efficient, competitive and informed market, and that the target shareholders are given reasonable time to consider a proposed acquisition, and are provided enough information to enable them to assess the merits of the proposal. To ensure that takeovers are conducted in accordance with the said principles, the Australian Takeovers Panel was given the power and authority to declare circumstances in relation to a takeover to be unacceptable and issue an order to ensure that the transaction proceeds as if the unacceptable circumstances have not occurred. One of the recognized unacceptable circumstance is misinformation, a circumstance where the directors and shareholders do not have or are deprived of the information necessary to make an informed decision or are misled about the relevant transaction. The powers of the Panel are broad enough that it is authorized to make a declaration of "unacceptable circumstances," even in circumstances where there is no express breach of the takeovers law, at the instance of

---

[55] See (a) The Singapore Code on Take-overs and Mergers (https://www.mas.gov.sg/-/media/MAS/resource/sic/The_Singapore_Code_on_Take_Overs_and_Merger_24-January-2019.pdf?la=en&hash=8DCB4A29BF6DDA17527EC7E54A8CB5CFEDDAEE7D); (b) The Codes on Takeovers and Mergers and Shares Buy-back (https://www.sfc.hk/web/EN/assets/components/codes/files-current/web/codes/the-codes-on-takeovers-and-mergers-and-share-buy-backs/the-codes-on-takeovers-and-mergers-and-share-buy-backs.pdf); (c) Rules on Take-overs, Mergers and Compulsory Acquisition issued by the Securities Commission Malaysia (https://www.sc.com.my/api/documentms/download.ashx?id=72152df0-c094-4ff2-8e5c-989bcd667be5)

[56] See Part 5.1 and Chapter 6 of the Corporations Act of 2001,

Australian Securities and Investments Commission (ASIC) or any person whose interest is affected by the circumstance.[57]

The foregoing shows and affirms the importance and the primacy accorded to the principle of protecting the interests of investors/shareholders by ensuring that they are provided relevant information to enable them to arrive at an informed decision—one that is emphasized in our jurisdiction. More importantly, the foregoing affirms the practice of recognizing, respecting, and implementing the spirit of the law in such circumstances. It is based on the equally important principle that what is expressly prohibited by law cannot be done indirectly in deference to the purpose and intent of the law.

In the instant case, the series of increases of its authorized capital stock by ASFII to fund and finance its expansion plans and operational requirements (which did not materialize after Strongoak became a stockholder), made possible the entry of Strongoak and its acquisition of 55.32% of ASFII's issued and outstanding capital stock within a period of practically less than two (2) years, through the 2014 Private Placement and 2015 SRO which were made in circumvention of the SRC and the SRC-IRR. To the Commission, this is an "unacceptable circumstance" that warrants the voiding of the shares acquired pursuant to and sanctioned by Section 71.2 of the SRC.

The Commission has consistently adopted the position that in relation to the performance of its mandate under the SRC, the exercise of its regulatory and administrative powers necessarily carries with it the power to penalize the regulated entity strictly in accordance with and more importantly, in proportion to the offense committed to ensure that the integrity of the market is not compromised and to afford full protection of investors.[58] This is the principle that justifies the nullification of the ASFII shares that were acquired by Strongoak in circumvention of the mandatory tender offer rule.

WHEREFORE, premises considered, the Appeal is hereby **GRANTED.** The Decision of the Markets Securities Regulation Department is hereby **REVERSED and SET ASIDE**.

---

[57] *The Takeovers Panel and Takeovers Regulation in Australia*., Ian Ramsay, *Ed*., Melbourne University Press (2010).

[58] See Sumitomo Metal Mining Philippine Holdings Corporation vs. CFD (SEC En Banc Case No. 07-11-241. October 10, 2017.

The ASFII shares acquired by Strongoak, Inc. under the 2014 Private Placement and 2015 SRO are hereby declared void subscriptions and shall be cancelled from the Stock and Transfer Book (STB) of ASFII where these shares shall be considered as unsubscribed, and shall be allocated for subscription by any person who intends to buy the same provided that he/she complies with all the legal requirements; and once the subscription is fully paid, ASFII shall pay Strongoak the price it paid for the subscriptions that were nullified.

SO ORDERED.

Makati City, Philippines.

EMILIO B. AQUINO
Chairperson

JAVEY PAUL D. FRANCISCO*
Commissioner

KELVIN LESTER K. LEE*
Commissioner

KARLO S. BELLO
Commissioner

MCJILL BRYANT T. FERNANDEZ
Commissioner

*On Official Business