Republic of the Philippines
Department of Finance
Securities and Exchange Commission
SEC Building, EDSA, Greenhills, Mandaluyong City

ASSET POOL A (SPV-AMC), INC.,
Petitioner,

-versus- **SEC En Banc Case No. 12-12-276**

ARMANDO PAN, JR., RACHEL ESTHER J. GUMTANG-REMALANTE, and BEN FERDINAND F. CRUZ, in their official capacities as officers constituting Special Hearing Panel of the Securities and Exchange Commission; and ATTY. LUIS MA. G. URANZA in his official capacity as Rehabilitation Receiver,
Public Respondents,

and

VICTORIAS MILLING COMPANY, INC.,
Private Respondent,

BANK OF THE PHILIPPINE ISLANDS and BANK OF THE PHILIPPINE ISLANDS - ASSET MANAGEMENT AND TRUST GROUP,
Indispensable Parties.

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In the matter of the Petition For Declaration of a State of Suspension of Payments, for the Approval of a Rehabilitation Plan, and the Appointment of a Management Committee,

BANK OF THE PHILIPPINE ISLANDS and BANK OF THE PHILIPPINE ISLANDS – ASSET MANAGEMENT AND TRUST GROUP
Petitioners,

-versus- **SEC En Banc Case No. 12-12-279**

The SEC SPECIAL HEARING PANEL 1 and VICTORIAS MILLING COMPANY, INC.,
Respondents,

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RESOLUTION

For resolution of the Commission are two cases, namely (1) a *Petition for Review on Certiorari with a Prayer for the Issuance of a Status Quo Order* filed by Asset Pool A (SPV-AMC), Inc. on 14 December 2012 and (2) a *Petition for Review on Certiorari* filed by the

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Bank of the Philippines Islands on 27 December 2012 both questioning the *Order* dated 29 November 2012 issued by the Special Hearing Panel (SHP) of the Commission issued in SEC Case No. 07-97-5693.

In the two petitions before the Commission herein, the parties are the same, the order subject of the petitions are the same, the issue in the two petitions both have reference to the rehabilitation of Victoria's Milling Corporation, Inc., and the resolution of the issue is, and should be, similar.[1]

The facts as culled from the records are as follows.

Back in 03 September 1991, VMC entered into a Mortgage Trust Indenture Agreement (MTIA) with the Bank of the Philippine Islands (BPI) wherein VMC is given the prior right to purchase all of the rights and interests of BPI over VMC's secured obligations in the event that BPI plans to assign or transfer its interest in the said debt instrument.

Subsequently or on 04 July 1997, VMC filed a *Petition for the Declaration of a State of Suspension of Payments, for the Approval of a Rehabilitation Plan, and the Appointment of a Management Committee* with the Commission which resulted in an *Order* issued by the SHP dated 08 July 1997 suspending all actions and claims against VMC pending before any Court, Tribunal, Office, Board and/or Commission.

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[1] In *Teston vs. Development Bank of the Philippines et al.*, G.R. No. 144374, 11 November 2005, the court laid down the rule in consolidation of cases as follows:

> "Consolidation of actions is expressly authorized under Section 1, Rule 31 of the 1997 Rules of Civil Procedure, which states:
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> SECTION 1. Consolidation. – When actions involving a common question of law or fact or pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.
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> A court may order several actions pending before it to be tried together where they arise from the same act , event or transaction, involve the same or like issues, and depend largely or substantially on the same evidence, provided that the court has jurisdiction over the cases to be consolidated and that a joint trial will not give one party an undue advantage or prejudice the substantial rights of any of the parties. (People vs. Sandiganbayan, G.R. No. 149495, 21 August 2003, 409 SCRA 419, 425; Canos vs. Peralta, No. L-38352, 19 August 1982, 115 SCRA 843.)
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> The obvious purpose of the rule allowing consolidation is to avoid multiplicity of suits to guard against oppression or abuse, to prevent delays, to clear congested dockets, to simplify the work of the trial court; in short the attainment of justice with the least expense and vexation to the parties litigants. (De Vera vs. Agloro, G.R. No. 155673, 14 January 2005, 448 SCRA 203, 218; Raymundo vs. Felipe, Nos. L-30887 and L-29754, 24 December 1971, 42 SCRA 615, 630.)"

The above ruling was reiterated in the recent case of *Domdom vs. The Honorable Third and Fifth Divisions of the Sandiganbayan, et al.*, G.R. Nos. 182382-83, 24 February 2010, wherein the court stated that;

> "It need not be underscored that consolidation of cases, when proper, results in the simplification of proceedings which saves time, the resources of the parties and the courts, and a possible major abbreviation of trial. It contributes to the swift dispensation of justice, and is in accord with the aim of affording parties just, speedy and inexpensive determination of their cases before the courts. Above all, consolidation avoids the possibility of rendering conflicting decisions in two or more cases which would otherwise require a single judgment."

A Rehabilitation Plan proposed by the Management Committee of VMC was approved in the 02 June 1999 *Order* of the SHP, later amended on 17 August 1999, and further modified on 19 August 1999.

On 29 November 2000, the Alternative Rehabilitation Plan (ARP) as proposed by the Management Committee was approved by the Commission. In furtherance of the ARP, the parties entered into a Debt Restructuring Agreement (DRA) wherein VMC confirmed the continuing validity and enforceability of the MTIA.

On 22 May 2006, BPI and BPI Asset Management and Trust Group sent VMC Notices of Sale to Asset Pool A (SPV-AMC), Inc. (APA) of all rights and interest over VMC's secured loan obligation and securities with BPI.

In this connection, VMC replied to the above-mentioned Notices in a Letter dated 12 July 2006 acknowledging receipt of the Notices and informing BPI of the necessity of proper recordal of the said sales in the corporate books of VMC before payment may be made to APA. In the said letter, VMC enumerated certain documents that BPI needs to submit before recording can be done.

After the lapse of more than six (6) years from the Notices of Sale, during which time there were correspondences between VMC and BPI, VMC filed with the Commission its *Consolidated Motion* dated 31 July 2012 praying that the Commission direct BPI and BPI-AMTG to disclose the details of the transaction involving the transfer of their rights and interest over VMC's secured loan obligations to APA in order that VMC may properly exercise its right of first refusal based on the MTIA and, therefore, purchase the said BPI's rights and interests over VMC's obligations. Further, VMC requested that it be allowed to consign payments due under the MTIA to the Commission or other authorized bank during the pendency of the *Consolidated Motion*. VMC also requested the Commission to direct the return of any overpayment VMC may have made in the event that VMC should exercise its right of first refusal.

The SHP in the present questioned *Order* dated 29 November 2012 authorized VMC to deposit payments in relation to the MTIA with the Rehabilitation Receiver pending the resolution of the *Consolidated Motion* noting that VMC is required to continuously pay its creditors amounts due on its outstanding debts at the risk of being in default under the DRA.

From the issuance of the assailed Order of the SHP, VMC has been consigning payments falling due pursuant to the MTIA with the Rehabilitation Receiver following the principle that orders of the Special Hearing Panel are immediately executory despite the pendency of an appeal.[2]

Hence, these present *Petitions*.

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[2] Section 2-5 of the *Rules of Procedure on Corporate Recovery* states as follows:

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

It is the consistent position of APA, BPI and BPI-AMTG that the Commission lacks jurisdiction to rule on the matters that VMC has raised in issue in its *Consolidated Motion* in relation to the transfer of the rights and interests of BPI and BPI-AMTG over VMC's secured obligations in favor of APA, specifically, whether or not VMC may still exercise its right of first refusal under the MTIA. Following this, they maintain that the SHP, in granting the prayer of VMC to consign payments falling due under the MTIA to a third party, exceeded its authority and acted in excess of its jurisdiction as the prayed for consignment is merely an ancillary remedy to the main issue.

APA, BPI and BPI-AMTG pray for the annulment of the 29 November 2012 *Order* of the SHP. APA further requests for the issuance of a *Status Quo Order* pegged before the implementation of the assailed *Order*.

On the other hand, VMC and the Rehabilitation Receiver, the latter filing his *Comment* at the behest of the Commission, state that the Commission is empowered by the SRC as amended by P.D.902-A to take cognizance of all matters in relation to the creation and implementation of a corporation's rehabilitation plan. In this regard, they note that the proper implementation of the MTIA is still within the jurisdiction of the SHP as it was made part of the DRA which was specifically entered into by VMC to carry out the Rehabilitation Plan.

VMC prays for the dismissal of the *Petitions*.

We find the *Petitions* meritorious.

At the heart of the present controversy is whether or not VMC was given an opportunity to exercise its right of first refusal pursuant to the MTIA.

It is well-settled that jurisdiction over a subject matter is conferred by law. It cannot be fixed by the will of the parties; not be acquired through waiver not enlarged by their omission nor conferred by the court's acquiescence. The allocation of jurisdiction is vested in Congress, and cannot be delegated to another office or agency of the Government.[3]

The Securities and Exchange Commission derives its jurisdiction from the Securities Regulation Code (SRC) as amended by P.D. No. 902-A and further amended by P.D. No. 1758. In relation to the present proceedings, it is clear that the Commission has jurisdiction over petitions filed by corporations for the suspension of claims and actions filed on or before 30 June 2000[4]. Therefore, it retained its jurisdiction over *Petition for the Declaration of a State of Suspension of Payments, for the Approval of a Rehabilitation Plan, and the Appointment of a Management Committee* filed by VMC.

In this connection, and specifically in rehabilitation proceedings, the Commission is also given the authority "to exercise such 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 to the Commission to achieve the objectives and purposes of the Decree."[5]

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[3] Gomez-Castillo v. COMELEC, G.R. No. 187231, 22 June 2010.
[4] Section 3 of P.D. No. 1758.
[5] Section 4 of P.D. No. 1758.

It should be noted that the objectives of rehabilitation proceedings were described by the Supreme Court as having both an equitable and rehabilitative purpose. "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. 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."[6]

Further, "a petition for rehabilitation, the procedure for which is provided in the Interim Rules of Procedure on Corporate Recovery, should be considered as a special proceeding. It is one that seeks to establish the status of a party or a particular fact...the status or fact sought to be established is the inability of a corporate debtor to pay its debts when they fall due so that a rehabilitation plan, containing the formula for the successful recovery of the corporation, may be approved in the end. **It does not seek a relief from an injury caused by another party.**[7]" (emphasis ours)

To our minds, VMC, in praying that the SHP direct BPI and BPI-AMTG to disclose the consideration for the transfer of their respective rights and interest over VMC's secured obligations over to APA **in order for VMC to properly exercise its right of first refusal under the MTIA,** is requesting that the Commission determine that BPI and BPI-AMTG committed a breach of their contractual obligation under the MTIA by depriving VMC to exercise its right of first refusal under the said agreement. Since VMC contends that it was not able to exercise its right of first refusal, the transfer of rights and interests of BPI and BPI-AMTG over VMC's secured obligation in favor of APA should be deemed ineffective and should, therefore, not be recognized by VMC and by the SHP.

The resolution of the issue mentioned in the above-preceding paragraph is not a proper subject-matter for the Commission as the same is not necessary or incidental to the rehabilitation proceedings specially handled by the Commission and does not serve the purpose of rehabilitation proceedings.

Although the MTIA, as correctly appreciated by all the parties involved, is included as one of the debt instruments that continue to be in force after the approval of VMC's Rehabilitation Plan, the performance by the parties of their respective duties and obligations under the MTIA should still be decided by the ordinary courts as they are part of the realm of general civil law and need no particular expertise or training of members of the Commission to interpret and apply.

It should be noted that the MTIA was entered into by VMC and BPI and BPI-AMTG years before the rehabilitation proceedings before the Commission were instituted. The MTIA's validity continued even after the Commission had declared a suspension of payment/claims in favor of VMC and even after a rehabilitation plan was approved.

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[6] Asiatrust Development Bank v. First Aikka Development, Inc., G.R. No. 179558, 11 June 2011.
[7] Rombe Eximtrade (phils.) Inc. and Spouses Romeo Peralta and Marionette Peralta v. Asiatrust Development Bank, G.R. No. 164479, 13 February 2008.

In this connection, the continuous validity of the MTIA was once more fully confirmed in Section 9 of the DRA which was executed by VMC and its creditors pursuant to the Rehabilitation Plant, to wit:

"Section 9

CONTINUING SECURITY OF SECURED CREDITORS OVER MTI PROPERTIES

As security for the prompt and effective repayment and compliance by VMC of any or all obligations contracted pursuant to this Restructuring Agreement and related documents, including payment of interests, charges, accruals and other fees due thereon, VMC hereby confirms the continuing validity and enforceability of the first mortgage granted to the SECURED CREDITORS, *pari passu* and in such proportion to their respective loans to, credits to, or claims against VMC directly cover/secured by MPCs, over the MTI Properties, including any and all substitutions, replacements, additions, amendments and/or renewals thereof which may be covered by the Mortgage Trust Indenture executed on 03 September 1991 by VMC in favor of BPI for the benefit of the SECURED CREDITORS and all amendments thereof."

It should be noted that the MTIA's validity and enforceability is confirmed in the DRA. Pursuant to Section 4.21 of the *Rules of Procedure on Corporate Recovery*:

4-21. ***Effect of the approval of the Rehabilitation Plan on the rights of creditors.*** – The approval of the Rehabilitation Plan shall suspend the creditors' claims against the debtor in accordance therewith. Payments to the creditors shall be allowed to the extent called for by the plan. **Contracts and other arrangements between the debtor and its creditors shall be interpreted as continuing insofar as they are not in conflict with the provisions of the Plan.** Claims incurred after the approval of the Plan and in the implementation thereof are not subject to any suspension order. (emphasis ours.)

The MTIA was not amended in any way by the ARP or the DRA and its provisions remain exactly as they were when first executed in 1999. In fact, without the subsequent rehabilitation proceedings before the Commission, the credit, debt payments and mortgage redemption provisions of the MTIA, as well as other rights and obligations emanating therefrom, were enforceable by both VMC and its creditors and binding over them.

The interpretation of the provisions of the MTIA, therefore, have no need for the application of the special or technical skills which members of the Commission have and apply in rehabilitation proceedings. Their interpretation should be left to the ordinary courts which should not be deprived of their power to decide ordinary cases in accordance with general laws that do not require any particular expertise or training to interpret and apply.

In the present circumstances, at most, the SHP may allow APA to intervene as the transferee of BPI and BPI-AMTG, though the transfer may yet be imperfect, for the purpose of allowing the former to participate, in a limited capacity, in the Rehabilitation Proceedings.[8]

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[8] Following the SEC En Banc's similar ruling in the case of St. Francis Square Holdings, Inc. et al. vs. the SEC Hearing Panel and Deutsche Bank AG London, SEC En Banc Case No. 10-08-146 (SEC Case No. 05-00-6609), now presently on appeal with the Court of Appeals under CA G.R. No. SP-129801.

VMC, on the other hand, if it refuses to recognize APA as its new creditor, should have merely continued required payments to BPI, as trustee under the MTIA, and raised the issue of BPI and BPI-AMTG's alleged breach of contractual obligation in the ordinary courts.

In fact, after VMC had received the Notices of Sale from BPI and BPI-AMTG in 2006 and before the issuance of the 29 November 2012 *Order*, VMC continued to deliver its payments to BPI as trustee under the MTIA and it was BPI that transmitted the said payments to APA.

We recognize that the MTIA gave VMC the right of first refusal to purchase its secured obligations from BPI and that this may have been an opportunity for VMC to lessen its financial burden. However, the Commission does not have jurisdiction to make a finding on whether or not such right of first refusal was afforded VMC.

The issue of whether or not VMC was given the opportunity to exercise its right of first refusal under the MTIA is one that should be threshed out in ordinary court proceedings as it requires the presentation by the parties of conflicting evidence. This is in the nature of adversarial proceedings different from the summary and non-adversarial nature of rehabilitation proceedings in the Commission. The Supreme Court recently stated in the case of *Advent Capital and Finance Corp. v. Alcantara* that "Rehabilitation proceedings are summary and non-adversarial in nature, and do not contemplate adjudication of claims that must be threshed out in ordinary proceedings."[9]

From the foregoing, the SHP had no jurisdiction over the subject matter of the present controversy when it issued the assailed *Order* dated 29 November 2012.

WHEREFORE, the instant *Petitions* are hereby **GRANTED**. The 29 November 2012 *Order* of the Special Hearing Panel is hereby **SET ASIDE**. VMC is hereby **DIRECTED** to resume payment in the manner before the assailed *Order* was issued. The Rehabilitation Receiver is also **DIRECTED** to transfer to BPI, as trustee of the MTIA, such payments made by VMC to him on the basis of the assailed *Order*.

SO ORDERED.

Mandaluyong City, Philippines; 24 September 2013.

TERESITA J. HERBOSA
Chairperson

MA. JUANITA E. CUETO
Commissioner

ELADIO M. JALA
Commissioner

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[9] G.R. No. 183050, 25 January 2012.

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MANUEL HUBERTO B. GAITE
Commissioner

ANTONIETA F. IBE
Commissioner