Republic of the Philippines
Department of Finance
Securities and Exchange Commission
PICC Secretariat Building, PICC Complex, Pasay City

COMMISSION EN BANC

NEW COAST HOTEL, INC.,
Appellant,

- versus - **SEC EB Case No. 12-14-351**

COMPANY REGISTRATION AND MONITORING DEPARTMENT,
Appellee.
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DECISION

This is an Appeal of the Order dated 20 November 2014 of the Company Registration and Monitoring Department (CRMD), which confirmed the validity of a fine imposed on New Coast Hotel, Inc. (NEW COAST) for non-compliance with the requirements of the Foreign Investment Act of 1991 (FIA).

RELEVANT FACTS

On **14 March 2003**, NEW COAST, a domestic corporation[1] engaged in the hotel business, was sold by its parent company, Megaworld Corporation, to CTF Hotel and Entertainment, Inc. (CTF HOTEL). In turn, CTF HOTEL was the domestic subsidiary of Flexi Deliver Holding Ltd. (FLEXI DELIVER), a company registered in the British Virgin Islands. <u>It is undisputed that, applying the Grandfather Rule, NEW COAST is a domestic corporation majority-owned by a foreign corporation.</u>

The FIA mandates that a domestic corporation that is majority-owned by a foreign corporation must file **SEC Form No. 101** (Application of an Existing Corporation to do Business under the Foreign Investment Act). <u>NEW COAST did not file the required SEC Form No. 101 in 2003, nor did it otherwise inform the CRMD of the change in ownership</u>.

On **17 July 2014**, NEW COAST filed with the CRMD its Amended Articles of Incorporation (Amended AOI), indicating its Business Name, "NEW WORLD MANILA BAY HOTEL." <u>On this occasion, the CRMD</u>

[1] SEC Registration No. CS200257709 dated 11 October 2002

discovered NEW COAST's failure to file SEC Form No. 101 back in 2003 and imposed a fine of Php 621,444.86.

Due to a Material Deficiency in its 2012 Annual Financial Statements (AFS), the CRMD imposed on NEW COAST an additional fine of Php 300.00 for violation of SEC Memorandum Circular No. 8, Series of 2009 (Re: Statement of Management's Responsibility), leading to a total fine of **Php 621,744.86**. The approval of NEW COAST's amendment was conditioned on the payment of this total fine.

On **8 October 2014**, NEW COAST wrote a letter to CRMD requesting that the fine be cancelled, since the right of action of the SEC over a violation that occurred back in 2003 has already prescribed. This request was treated as a Motion for Reconsideration of the 17 July 2014 imposition of fine.

On **30 October 2014**, NEW COAST paid[2] the total fine of **Php 621,744.86**.

On **11 November 2014**, the CRMD approved NEW COAST's Amendment.

On **20 November 2014**, CRMD denied NEW COAST's Motion for Reconsideration, viz.

> We confirm the imposition of penalty.
>
> It is worthwhile stressing that the penalty imposed upon subject corporation is an **administrative sanction** for increasing its foreign equity participation to more than forty percent (40%) without prior registration or approval of this Commission pursuant to the requirement of [the] FIA and prevailing rules and regulations of the Commission.
>
> **Imposition of penalty is not merely a right of [action]**, as referred to by Article 1149 of the Civil Code, insofar as the Commission is concerned, but a **continuing exercise of authority** over registered corporations. The power of the Commission vested under the Securities Regulation Code to regulate and to impose sanctions for violation of laws it is tasked to enforce **does not prescribe** but remains during the life of the corporation. This is also clear in Article 1108 of the Civil Code which states that prescription does not run against the State.
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> Anent the alleged failure of the Commission to call the attention of the subject corporation during the previous instances of monitoring, please be advised that the

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[2] SEC Official Receipt No. 1195249 dated 30 October 2014

> Commission is not precluded from enforcing the requirements of the law. As a rule, the State, as represented by the government, is **not estopped by the mistakes or errors of its officials or agents**. This is especially true when the government's actions are sovereign in nature. (The Heirs of Atty. Jose C. Reyes, et. al. v. Republic of the Philippines, G.R. No. 150862, [3 August 2006].)
>
> The alleged erroneous application and enforcement of the law by the personnel of the Commission cannot prevent it from making a subsequent correction of those errors, if any. [Emphasis supplied]

On **23 December 2014**, NEW COAST filed its **Memorandum on Appeal** to the En Banc, stating that Article 1149 of the Civil Code supplies a 5-year prescriptive period for "other laws" which do not expressly provide for a prescriptive period in case of violation, such as the FIA, viz.

> ART. 1149. All other actions whose periods are not fixed in this Code or in other laws must be brought within five years from the time the right of action accrues.

NEW COAST reiterated its argument that the violation of the FIA has already prescribed 5 years after 2003 and has long prescribed by the time the CRMD discovered it in 2014, viz.

> The Company [NEW COAST] respectfully submits that the SEC's **right of action** to assess the Penalty accrued in 2003 when the Company failed to file an SEC Form No. F-101 upon the transfer of 100% of the Company's shares to a non-Philippine national.
>
> In this regard, Article 1150, Civil Code provides that the time of prescription for all kinds of action shall be counted from the day they may be brought. Considering that the FIA violation was committed in 2003, the SEC's right of action against the Company accrued in 2003 and the SEC's right to assess the Penalty prescribed in 2008.
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> xxx xxx xxx
>
> Based on the foregoing, the Company respectfully submits that the SEC's right to impose penalties against the Company for violation of the FIA requirement has already prescribed in light of the statute of limitation provided in Article 1149, Civil Code.[3]

Moreover, NEW COAST argued that despite CRMD monitoring in 2007, 2009, and 2011, the violation remained undetected; therefore,

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[3] Page 8 of Memorandum on Appeal.

assuming that the CRMD is not barred by prescription, it is barred by *laches* due to its inaction.[4]

On **22 January 2015**, the CRMD filed a Manifestation in lieu of a Reply Memorandum, stating that it is "maintaining its position."

Hence this appeal.

DISCUSSION

The only issue is whether or not the CRMD's imposition of a fine for failure to file SEC Form No. F-101 in 2003 is barred by prescription.

The Supreme Court has previously applied **Act No. 3326**[5] in determining the prescriptive period for the Commission's investigations, since the Securities Regulation Code (SRC) is a special law which does not provide a prescriptive period for offenses.[6] It has also been used in recent cases decided by the Commission. <u>Similarly, the Foreign Investments Act of 1991 (FIA) is a special law without a prescriptive period that is enforced by the Commission.</u>

Pursuant to the FIA, the CRMD requires the submission of SEC Form No. F-101[7] for registered corporations which have increased their foreign equity to more than 40% through "assignment of Filipino stockholdings to non-Philippine nationals."[8]

NEW COAST, a corporation originally owned by Philippine nationals, assigned more than 40% of its shares to non-Philippine nationals. It was thus obligated to file SEC Form No. F-101. Its non-filing of SEC Form No. F-101 was a violation of the FIA.

FIA violations are punishable by a fine[9] and Act No. 3326 specifies a prescriptive period for offenses punishable by a fine, viz.

> **Section 1.** Violations penalized by special acts shall, unless otherwise provided in such acts, prescribe in accordance with the following rules: (a) **<u>after a year</u> for offenses punished only by a fine** or by imprisonment for not more than one month, or both; (b) after four years for those punished by imprisonment for more than one

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[4] Page 13 of Memorandum on Appeal.
[5] "An Act to Establish Prescription for Violations of Special Acts and Municipal Ordinances and to Provide When Prescription Shall Begin"
[6] <u>SEC v. Interport Resources Corporation</u>, G.R. No. 135808, 6 October 2008; <u>Citibank v. Gabaldon</u>, G.R. Nos. 198444 and 198469-70, 4 September 2013.
[7] "Application of an Existing Corporation to do Business under the Foreign Investments Act of 1991"
[8] Number 5 of SEC Form No. F-101
[9] Section 14 of the Foreign Investments Act of 1991

> month, but less than two years; (c) after eight years for those punished by imprisonment for two years or more, but less than six years; and (d) after twelve years for any other offense punished by imprisonment for six years or more, except the crime of treason, which shall prescribe after twenty years. Violations penalized by municipal ordinances shall prescribe after two months.
>
> **Sec. 2.** Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, **from the discovery thereof** and the institution of judicial proceeding for its investigation and punishment.
>
> xxx xxx xxx

It was incumbent on NEW COAST to inform the CRMD of the change in ownership on 14 March 2003 by filing SEC Form No. F-101, but it did not do so until several years later, when it needed to amend its Articles of Incorporation.

<u>The CRMD only discovered the offense on 17 July 2014, and the one (1) year period from discovery commenced from that date.</u> Thus, the CRMD's imposition of fine, soon after NEW COAST filed for amendment, was within the prescriptive period.

WHEREFORE, the CRMD Order dated 12 November 2014 is **AFFIRMED**.

SO ORDERED.

Pasay City, Philippines; 30 July 2019.

EMILIO B. AQUINO
Chairperson

ANTONIETA F. IBE
Commissioner

EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner