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

VICTORIAS MILLING COMPANY, INC.,
Petitioner-Appellant,

SEC *En Banc* Case No. 04-16-399

- *versus* -

THE SPECIAL HEARING PANEL 1 and LAND BANK OF THE PHILIPPINES,
Respondents.

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DECISION

This resolves the pending *Appeal*[1] filed, on 01 April 2016, by Victorias Milling Company, Inc. (**VMC**) seeking to reverse and set aside the *Order* dated 17 March 2016 (**Assailed Order**) of the Special Hearing Panel 1 (**SHP1**), the dispositive portion is read as follows:

> "WHEREFORE, premises considered, Victorias Milling Company is hereby directed **to deliver the refined sugar equivalent** to the amount of **Four Hundred Nine Million Eight Hundred Fourteen Thousand Thirteen Pesos and Twenty Eight Centavos (P 409,814,013.28)** to Intervenor Landbank of the Philippines or its duly authorized representative. In case the release of the refined sugar is no longer possible, Victorias Milling Company is directed (sic) **pay for the monetary equivalent** of the remaining amount of the loan incurred by NNMCI, in the total amount of **Four Hundred Nine Million Eight Hundred Fourteen Thousand Thirteen Pesos and Twenty Eight Centavos (P 409,814,013.28)**, to Landbank of the Phiippines or its duly authorized representative."[2]

The Facts and Proceedings

On 04 July 1997, VMC filed before the Commission, through the Securities Investigation and Clearing Department (**SICD**) a *Petition for Declaration of Suspension of Payments; for the Approval of a Rehabilitation Plan; and the*

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[1] Notice of Appeal and Memorandum of Appeal dated 01 April 2016, Records, pages 236-267.
[2] Emphasis supplied.

Appointment of a Management Committee (SEC Case No. 07-97-5693). The SICD gave due course to the said petition. Thereafter, the SICD issued an *Order* dated 08 July 1997 suspending all actions or claims against VMC that are pending before any court, tribunal, office, board and/or the Commission.

On 31 August 1998, Landbank of the Philippines (**LBP**) filed with the SICD a *Complaint-in-Intervention*[3] against VMC praying that the RSDO issued by VMC be recognized as part of its DIRECT liabilities and its payment be included in the latter's rehabilitation plan. Later on 12 April 1999, LBP filed an *Amended Complaint-in-Intervention*[4] to include an additional claim.

In its *Complaint-in-Intervention*, LBP alleges that, on 30 August 1994, it granted North Negros Marketing Company, Inc. (**NNMCI**), a subsidiary of VMC, an Omnibus Credit Line[5] amounting to Php 250,000,000.00, which was later increased to Php 400,000,000.00[6]. NNMCI availed of the said credit line and executed the following promissory notes:

Promissory Note Number	*Amount*	*Date*
B-1946 (09)[7]	Php 50,000,000.00	14 February 1997
B-1946 (10)[8]	Php 50,000,000.00	14 February 1997
B-1946 (11)[9]	Php 2,073,933.87	15 April 1997
B-1946 (12)[10]	Php 622,334.00	16 April 1997
B-1946 (13)[11]	Php 22,059,680.25	17 March 1997 19 March 1997 20 March 1997
96-4-203-600[12]	$ 1,550,000.00	27 November 1996

At the same time, NNMCI mortgaged its real properties in favor of LBP to secure its loan. In addition to the said mortgages, NNMCI executed several *Promissory Notes covered by Deeds of Assignment*[13] conveying to LBP the right to claim 588,716 kilograms of refined sugar under VMC Refined Sugar Delivery Orders (**RSDO**) numbers 37568, 37569, 37570, 37571, 37572, and 37573[14].

The said Deeds of Assignment was accompanied by a *Certification*[15], signed by VMC's Treasurer, Rolando C. Rodriguez, and Executive Vice-President, Carlos H. Tupas Jr., stating that VMC issued in favor NNMCI the RSDOs totaling

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3 Dated 27 August 1998, Annex "C" of the Memorandum of Appeal, Records, pages 195-220.
4 Dated 07 April 1999, Annex "F" of the Memorandum of Appeal, Records, pages 132-142.
5 Annex "A" of the Amended Complaint-in-Intervention, Records, pages 126130.
6 Annex "B" of the Amended Complaint-in-Intervention, Records, pages 121-125.
7 Annex "E" of the Memorandum of Appeal, Records, page 183.
8 Annex "E-1" of the Memorandum of Appeal, Records, page 182.
9 Annex "E-2" of the Memorandum of Appeal, Records, pages 179-181.
10 Annex "E-3" of the Memorandum of Appeal, Records, pages 176-178.
11 Annex "E-4" of the Memorandum of Appeal, Records, pages 173-175.
12 Annex "E-5" of the Amended Complaint-in-Intervention,, Records, page 99-101.
13 Annex "F", "F-1", "F-2", "F-3", "F-4", "F-5" of the Amended Complaint-in-Intervention, Records, pages 85-98.
14 Annexes "F-6" – "F-11" of the Amended Complaint-in-Intervention,, Records, page 79-84.
15 Annex "G" of the Memorandum of Appeal, Records, page 151.

588,716 kilograms of refined sugar standard grade 50-kilo pack, which is available upon demand and surrender of the RSDOs[16].

When the loans became due, NNMCI failed to pay the same. Consequently, LBP foreclosed the mortgaged properties. Despite the foreclosure, however, there still remain an outstanding balance of Php 187,176,231.40, exclusive of interests, penalties and other charges. Then, LBP tried to secure the physical possession of refined sugar covered by the subject RSDOs but VMC refused to honor the same.

On 24 September 1998, VMC's Management Committee (**VMC-MANCOM**) filed a *Motion to Dismiss* based on the following grounds: 1.) LBP failed to comply with the rules on non-forum shopping; 2.) *litis pendencia*; 3.) LBP failed to state a cause of action; 4.) the Commission has no jurisdiction over the complaint-in-intervention; and 5.)LBP failed to comply with a condition precedent for filing the claim.

On 30 September 1998, VMC filed its *Answer*[17]. Then, it also filed, on 19 April 1999, an *Amended Answer*[18] to LBP's *Amended Complaint-in-Intervention*. It argues that: 1.) LBP should direct its claim against NNMCI; 2.) the Commission has no jurisdiction over LBP's claims since the latter did not pay the required docket fees; 3.) the subject RSDOs were executed by persons who are not authorized to sign by VMC; 4.) LBP did not properly demand within the contemplation of the Warehouse Receipts Law as no *quedan* was presented and there was no offer to pay the warehouseman's lien; 5.) the RSDOs, certification and other documents were executed by persons not authorized by VMC; and 6.) the RSDOs contain escalation clauses which are *void in initio*. Hence, LBP has no cause of action.

Subsequently, the proceedings ensued and the parties presented their respective arguments and evidence[19] in support to their positions. Then, SHP1 issued the Assailed Order and ruled that:

> "The Panel agrees with the contention of Intervenor LBP. Regardless of whether or not the subject RSDOs in question are warehouse receipts, the execution of the Deed of Assignment by NNMCI in favor of LBP effectively transfers the right of the former to claim the delivery of the specific quantity of the refined sugar to the latter.
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> Obligations may arise, not only from a warehouse receipt or a negotiable instrument. In fact, any kind of document may give rise to an obligation because there are various sources of obligations. Under

[16] This to certify that VICTORIAS MILLING CO., INC., has issued in favor of NORTH NEGROS MARKETING CO., INC. (NNMCI) VMC Refined Sugar Delivery Order (RSDO) totaling 588,716 LKG Refined Sugar Standard Grade 50-kilo pack, which shall be available upon demand and surrender of said refined sugar delivery order as follows: x x x This certification is being issued in connection with NNMCI's assignment of the above stocks for loan availment with your bank.

[17] Dated 28 September 1998.

[18] Dated 15 April 1999.

[19] LBP's Exhibits "B"; "E"; "F"; "G"; "H"; "I"; "J"; "K"; "H-1-a"; "I-1-a"; "J"; "M"; "N"; "O"; "S"; "T"; "U"; "V"; "W"; "X"; "Y".

Article 1157 of the Civil Code, obligations may arise from law, contracts, *quasi-contracts*, acts or omissions punished by law and *quasi-delicts*. They also come in different forms. Under our laws, a contract may be even be expressed or implied.

In this case, a quasi-contract was the source of the obligation of VMC to deliver the refined sugar to NNMCI. The undertaking to make the subject bags of refined sugar available upon demand and upon surrender of the RSDOs in issue, as embodied in the Certification issued by VMC for the purpose of loan availment with the Intervenor, partake of the nature of an obligation. **Considering that NNMCI has transferred its right to LBP, it is but proper for VMC to honor its obligation under the RSDOs it issued by delivering the bags of refined sugar to Landbank**.

It is thus settled that the obligation to release the remaining bags of sugar can be treated as a contractual obligation of VMC. A discussion on whether or not the subject RSDOs are warehouse receipts is immaterial in this case.

VMC is obliged to deliver the remaining bags of sugar under the subject RSDOs or to pay the monetary equivalent thereof, should the first be impossible to fulfill. In this situation, to rule otherwise would be iniquitous and would run contrary to the principles of justice."

Hence, this *Appeal*.

In VMC's *Memorandum of Appeal*[20], it argues that the SHP1 acted without or in excess of jurisdiction or with grave abuse of discretion, when it issued the Assailed Order and ruled that VMC is obliged to deliver to LBP refined sugar or its monetary equivalent, because:

i. SHP1 has no jurisdiction to adjudicate and award the claims and reliefs in the Complaint-in-Intervention;
ii. On the assumption that SHP1 has jurisdiction, LBP has no cause of action against VMC since the RSDOs upon which LBP bases its claim are not in fact or in law warehouse receipts or *quedans*, further, the RSDOs are not valid and enforceable since they were not issued by a competent authority or officer of VMC;
iii. The Deeds of Assignment executed by NNMCI in favor of LBP did not transfer any rights, interest or ownership over the sugar covered by the RSDOs to LBP, the same being merely a collateral or pledge constituted to secure the fulfillment of NNMCI's obligation; and
iv. LBP's demand to VMC to deliver the possession of the refined sugar covered by the RSDO or to pay the monetary equivalent of the remaining amount of the loan incurred by NNMCI is not anchored on any source of obligation either by law or contract.

[20] Note 1, Supra.

Thereafter, VMC filed a *Supplement to the Memorandum of Appeal*[21] where it presented additional arguments, to wit:

i. The Certification dated 29 August 1996 on which LBP anchors VMC's alleged liability to surrender the sugar subject of the RSDOs was not authorized by the Board of Directors of VMC;
ii. VMC cannot be held liable on the basis of a Quasi-Contract and the Certification allegedly issued by VMC; and
iii. The purported Deeds of Assignment executed by NNMCI in favor of LBP could not transfer any rights, interest, or ownership over the sugar allegedly covered by the RSDOs, the same being merely a collateral or pledge constituted to secure the fulfillment of NNMCI's obligation.

On the other hand, LBP, in its *Reply Memorandum*[22], counters that:

i. SHP1 has jurisdiction to award the claims of LBP as prayed for in its Complaint-in-Intervention as provided in sub-paragraph (d) of Section 5 and sub-paragraphs (c) and (d) of Section 6 of P.D. No. 902-A;
ii. SHP1 was correct in holding that petitioner VMC is obliged to deliver the remaining bags of sugar under the RSDOs (and embodied in the Certification of VMC) or to pay the monetary equivalent thereof even if the RSDOs are not considered warehouse receipts or *quedans*; and
iii. The Deed of Assignment by NNMCI in favor of LBP effectively transfer the right of the former to claim the delivery of the specific quantity of the refined sugar as declared in the subject RSDOs.

<u>Issues</u>

Simply stated, the issues now to be resolved are:

1. Whether or not SHP1 has jurisdiction to resolve LBP's *Complaint-in-Intervention*;
2. Whether or not LBP can lawfully claim from VMC based on the RSDO Nos. 37568, 37569, 37570, 37571, 37572, and 37573 which was assigned to the former and certified by the latter.

<u>Ruling</u>

<u>Jurisdiction over LBP's Complaint-in-Intervention</u>

VMC argues that SHP1 has no jurisdiction to adjudicate and award LBP's claim on the ground that rehabilitation proceedings are summary and non-adversarial in nature. It avers that LBP's claim partakes the nature of a civil claim

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[21] Dated 06 April 2016, filed on 12 April 2016.
[22] Dated 26, April 2016, Filed on 27 April 2016.

which involves an actual controversy involving rights that are legally demandable or enforceable. Hence, the determination of the said issues should be with the regular courts and not with the Commission.

In support to its position, VMC cited *Advent Capital vs. Alcantara, et al.*[23] and *Express Investment III Private Ltd. et al. vs. Bayan Telecommunications, Inc. et al.*[24]. Furthermore, it also cited SEC En Banc Case No. 12-12-276 entitled *"Asset Pool A (SPV-AMC), Inc. vs. Armando Pan Jr., et al."*, and SEC En Banc Case No. 12-12-279 entitled *"Bank of the Philippine Islands, et al. vs. SEC Special Hearing Panel 1, et al."* (**VMC vs. APAA & BPI**), which were affirmed by the Court of Appeals[25] and Supreme Court[26].

On the other hand, LBP disagrees with VMC's argument. It claims that the Commission has jurisdiction as provided in sub-paragraph (d) of Section 5 and sub-paragraph (d) of Section 6 of P.D. No. 902-A, as amended by P.D. Nos. 1653 and 1758. LBP avers that its claim is a simple money claim founded on a contract which is within the jurisdiction of SHP1.

Recently, we have extensively discussed and passed upon the issue on the Commission's jurisdiction over these VMC RSDO claimants in SEC *En Banc* Case No. 01-15-353 entitled *"Victorias Milling Company, Inc. vs. Special Hearing Panel 1 and Dao Heng Bank, Inc."*[27] (**VMC vs. DHB**). In the said case, we have ruled that:

> "It is axiomatic that the **jurisdiction of a tribunal, including a quasi-judicial officer or government agency, over the nature and subject matter of a petition or complaint is determined by the material allegations therein and the character of the relief prayed for, irrespective of whether the petitioner or complainant is entitled to any or all such reliefs.**
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> In this case, the **Commission's exclusive and original jurisdiction over petitions for suspension of payments or rehabilitation of corporations, as well as incidents thereof, is clearly provided in Sections 5 (d) and 6 (c) (d) of P.D. no. 902-A, as amended by P.D. No. 1758.**
> x x x
>
> In view of the foregoing jurisprudence, it is clear that the stay order of rehabilitation proceedings seek to prevent the creditors from pursuing separate and disparate remedies in various fora to enforce their claim. The principle of "equality is equity" lies at the heart of ensuring as much as possible that the process of being able to sort out among the debtor, the creditors and other stakeholders, the most

[23] G.R. No. 183050, 25 January 2012.
[24] G.R. No. 174457-59, 05 December 2012.
[25] Annex "M" of the Memorandum of Appeal, Court of Appeals 5th Division's Decision dated 05 December 2014 (CA-GR-SP No. 132208, 05 December 2014).
[26] Annex "N" of the Memorandum of Appeal, Supreme Court, 2nd Division's Notice dated 03 August 2015 and Annex "O" of the Appeal, Supreme Court 2nd Division's Notice dated 21 October 2015 (G.R. No. 218239, 03 August 2015).
[27] Decision dated 29 November 2016.

feasible means possible to work-out a rehabilitation plan to the best interest of all stakeholders.

Thus, the Commission, prior to the enactment of R.A. No. 8799 or the Securities Regulation Code (SRC), is **empowered to hear and determine all claims by creditors against the distressed corporation**. Indeed, Section 5 of the SRC further declared that the Commission shall retain jurisdiction over pending suspension of payments/rehabilitation cases filed as of 30 June 2000 until finally disposed. This is the reason why the Commission should retain jurisdiction over the instant case, and any incidents thereof.

On a similar note, we like to take this opportunity to clarify and discuss the applicability to the instant case of the previous consolidated cases of "*Asset Pool A (SPV-AMC), Inc. vs. Armando Pan Jr., et al.*", SEC En Banc Case No. 12-12-276 and "*Bank of the Philippine Islands, et al. vs. SEC Special Hearing Panel 1, et al.*" SEC En Banc Case No. 12-12-279 (VMC vs. APAA & BPI), which was affirmed by the Court of Appeals and Supreme Court.

In the said consolidated cases, the Commission was asked **to interpret a stipulation** (the exercise of VMC's right of first refusal) in the Mortgage Trust Indenture Agreement (MTIA) between VMC and Bank of the Philippine Islands (BPI). Similarly, BPI assigned its right over VMC's obligation in the MTIA to Asset Pool A (SPV-AMC), Inc. (APAA). The Commission does ruled that it does not have jurisdiction to determine issues/matters which are not necessary or incidental to the rehabilitation proceedings and does not serve the purpose of rehabilitation. However, in the instant case, we are now asked **to determine DHB's claim** against VMC based on the subject issued RSDOs. Specifically, DHB's right to claim the 105,000 bags of refined sugar covered by the subject RSDOs which was assigned by PEPSI to the former.

Otherwise stated, VMC vs. APAA & BPI and the present case are differently situated. In VMC vs. APAA & BPI, the issue to be resolve is a determination of a right in an agreement/contract (MTIA), thus the Commission has no jurisdiction over the same. While in the present case, the issue to be resolve is a determination of a claim against the distressed corporation. Since the Commission is empowered to resolve and determine claims against a distressed corporation, we rule that we have jurisdiction over the instant case.

Having settled that the Commission has jurisdiction over all claims when it issued stay orders, it should also be pointed out that the Supreme Court had the occasion to rule on the coverage of claims specifically with regard to the VMC's rehabilitation. In *Malayan Insurance Company, Inc. vs. Victorias Milling Company, Inc.*, *Malayan* assails the CA's *Decision* affirming the suspension of the proceedings on its claim for reimbursement against VMC, the Supreme Court ruled that:

x x x

Based on the above-discussion, DHB's claim for the delivery of 105,000 bags of refined sugar covered by the subject RSDOs, falls within the definition of "claims" covered by the stay order. Thus, it should be filed with the Commission. This is because DHB's claim emanates from its right over VMC's RSDOs. DHB's right was conveyed, transferred and assigned by PEPSI, as evidenced by the Deed of Assignment between DHB and PEPSI.

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Additionally, the Commission *En Banc* already allowed DHB's *Motion to Intervene*, when it ruled:

> "During the 18 February 1998 hearing, both parties were duly represented by their respective counsels and there ensued an exhaustive discussion on the pertinent issues of the case and the respective argument of both parties. Petitioner-appellee VMC clarified that it has no objection to the intervention filed by DHB. Both parties declared during the hearing that they have no objections to the SEC deciding the present controversy.
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> The exclusive jurisdiction of the SEC over cases involving the assets and properties of a distressed firm under sec. 5 (d) of P.D. 902-A was upheld by the Supreme court in the case of *RCBC vs. IAC* (213 SCRA 830)
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> In view of the foregoing, the instant appeal is hereby GRANTED. The Omnibus Order of the Hearing Panel dated 03 November 1997 is thus MODIFIED, allowing the Motion for Leave to Intervene filed by Intervenor-Appellant DHB before the SICD."

Clearly, VMC's admissions in the RTC and SHP proceedings are contrary to its present position which casts doubt to the arguments it has presented in this instant appeal.

In *Banaga, et al. vs. COSLAP, et al.* the parties had conflicting free patent applications over a parcel of public land. On appeal to the Supreme Court, Banaga seeks the annulment of the decision Commission on the Settlement of Land Problems (COSLAP) on the ground that COSLAP has no jurisdiction to hear and resolve the controversy, and that it is the Bureau of Lands which has the jurisdiction over the dispute between the parties herein. It was held that:

> "Finally, assuming, *in gratia argumenti*, that the Provincial PACLAP Committee had no jurisdiction over the controversy, petitioners are already estopped from raising the issue of jurisdiction and from alleging at the same time that the case falls within the jurisdiction of the Bureau of Lands. **Petitioners had not raised this matter of lack of jurisdiction in their appeal to the PACLAP which was later replaced by the COSLAP.** What they alleged in their appeal, as one of their assigned errors, was that the PACLAP Provincial

> Committee exceeded its jurisdiction in ruling on the validity of the verbal agreement between the parties herein, which they contend to be properly within the jurisdiction of the civil courts. This is not the issue of jurisdiction which they are now raising before Us. In the instant petition, they now claim that jurisdiction belongs to the Bureau of Lands and not to the PACLAP.
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> This Court has time and again **frowned upon the undesirable practice of party submitting his case for decision and then accepting the judgment, only if favorable, and attacking it for lack of jurisdiction when adverse**. Here, the principle of estoppel applies. Hence, a party may be estopped or barred from raising the question of jurisdiction for the first time in a petition before the Supreme Court when it failed to do so in the early stages of the proceedings. This principle should deter those who are disposed to trifle with the courts by taking inconsistent positions contrary to the elementary principles of right dealing and good faith. Further, the rule is settled that this Court cannot allow a litigant to assume a different posture when he comes before the court and challenges the position whereby the court, which is supposed to review administrative determinations, would not review, but determine and decide for the first time, a question not raised in the administrative forum."

To reiterate, it was VMC which filed, on 09 July 1999, a motion to suspend proceedings with the RTC on the ground that the Commission had already acquired jurisdiction over the rehabilitation case when it issued a *Stay Order*. Moreover, VMC participated in the proceedings before the SICD Hearing Panel. In fact, it presented evidence in support of its defense. However, after failing to obtain an affirmative relief from the SHP, VMC now invokes the Commission's lack of jurisdiction over DHB's claim. Pursuant to principles laid down in *Banaga*, which cited *Tijam vs. Sibonghanoy*, **VMC should be estopped from questioning the Commission's jurisdiction based not only on estoppel *in pais* but estoppel by laches as well**.

As to VMC's argument that rehabilitation proceedings are summary and non-adversarial in nature, we are not persuaded. VMC anchored its argument on the Supreme Court cases of *Advent Capital vs. Alcantara, et al.* and *Express Investment III Private Ltd. et al. vs. Bayan Telecommunications, Inc. et al.*. A close reading of the same would, however, show that these cases find no application.

In *Advent Capital* case, it is the distressed corporation which is the creditor seeking to recover its claim from a third party in the rehabilitation proceedings. The Supreme Court ruled that the rehabilitation court has no power to resolve disputes between *Advent* (as creditor) and its claim against third parties. Thus, the Supreme Court ruled that it should file a separate action for recovery of its claim. In the instant case, PEPSI is not a third party. VMC recognized and even paid for several RSDOs that PEPSI presented. Thus, VMC is not disputing the claim (RSDOs) but merely argues that "since no warehouse receipt was presented to VMC, there is no obligation or latter's part to deliver the goods".

> Similarly, in *Express Investment* case, the Supreme Court ruled that claim of costs (payment to accountants, financial experts, lawyers, etc.) incurred by creditors in pursuing their claim cannot be included in the rehabilitation proceedings.
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> Both of these cases do not fall squarely to the facts of the instant case, hence these are not applicable.
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> Finally, it is clearly provided in Section 2-4 of the SEC Rules of Procedure on Corporate Recovery that:
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> > "Section 2-4. Permissive intervention – On motion and for good cause shown, the Commission may permit any interested party to intervene generally or with respect to any specified matter."
>
> As above-provided, the **Commission can allow an interested party to intervene in VMC's rehabilitation proceedings**. The Commission is given the discretion to determine which interested party may participate in the rehabilitation proceedings of a distressed corporation."

VMC vs. DHB is similar with the instant case. LBP's claim comes from NNMCI's assignment over the latter's right to claim 588,716 kilograms of refined sugar covered by the subject RSDOs. Since we are faced with the same issues, we now rule in the same manner as in VMC vs. DHB that the Commission has jurisdiction to determine LBP's claim against VMC.

<u>LBP's Claim based on VMC RSDOs</u>

VMC argues that the RSDOs, on which LBP bases its right to claim 588,716 kilograms of refined sugar, are not warehouse receipts or *quedans* but mere invoices and delivery orders. Thus, it is not bound to deliver any sugar to LBP pursuant to Section 8 of Act No. 2137 or the "Warehouse Receipts Law"[28]. Moreover, it contends that the supposed RSDOs[29] and VMC *Certification*[30] were not issued by a competent authority or officer of VMC.[31]

VMC further contends that the bags of sugar covered by the subject RSDOs is a pledge to secure NNMCI's loan obligation. Thus, LBP cannot acquire ownership over the refined sugar covered by the subject RSDOs through a mere indorsement or delivery since this is in contravention of the principle of *pactum*

[28] Sec. 8. Obligation of warehousemen to deliver. – A warehouseman, in the absence of some lawful excuse provided by this Act, is bound to deliver the goods upon a demand made either by the holder of a receipt for the goods or by the depositor; if such demand is accompanied with: (a) An offer to satisfy the warehouseman's lien; (b) An offer to surrender the receipt, if negotiable, with such indorsements as would be necessary for the negotiation of the receipt; and (c) A readiness and willingness to sign, when the goods are delivered, an acknowledgment that they have been delivered, if such signature is requested by the warehouseman. In case the warehouseman refuses or fails to deliver the goods in compliance with a demand by the holder or depositor so accompanied, the burden shall be upon the warehouseman to establish the existence of a lawful excuse for such refusal.

[29] Note 14, Supra.

[30] Note 15, Supra.

[31] Note 20, Supra.

commissorium. Also, VMC asserts that LBP's claim to the bags of sugar covered by the subject RSDO is not anchored in any source of obligation either in law or contract.

On the other hand, LBP contends that SHP1 was correct in ruling that VMC is liable to deliver the bags of refined sugar based on the subject RSDOs and VMC *Certification*. It argues that the Deeds of Assignment issued by NNMCI in LBP's favor effectively transfer the right to claim the bags of refined sugar covered by the subject RSDOs. It added that VMC is estopped from denying the authority of its officers who signed the RSDOs and VMC certification under the doctrine of apparent authority. LBP further claims that it is collecting from VMC as an assignee of NNMCI. Also, it alleges that VMC is not privy to its agreement with NNMCI, hence VMC cannot set up as a defense the principle of *pactum commissorium*.

As earlier discussed, in VMC vs. DHB, we have ruled that VMC is liable to DHB for the issued RSDOs which were assigned to the latter, to wit:

> "We find merit in DHB's position.
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> A *quasi-contracts* are those juridical relations arising from lawful, voluntary and unilateral acts give rise to the juridical relation of quasi-contract to the end that no one shall be unjustly enriched or benefited at the expense of another. In this case, there was no definite determination that VMC benefitted from the NNMCI's loan with DHB. Thus, it cannot be said that VMC was unjustly enriched with NNMCI's loan.
>
> On the other hand, **an assignment of credit/right is the process of transferring the right of the assignor to the assignee**, who would then be allowed to proceed against the debtor. It may be done either gratuitously or onerously, in which case, the assignment has an effect similar to that of a sale. In an assignment of credit/right, the consent of the debtor is not essential in order that it may produce legal effects. Hence, the duty to pay does not depend on the consent of the debtor; otherwise, all creditors would be prevented from assigning their credits/rights because of the possibility of the debtors' refusal to give consent.
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> Furthermore, in *Victorias Milling Co., Inc. vs. Court of Appeals and Consolidated Sugar Corporation*, wherein *Consolidated Sugar Corporation* became the holder/owner of VMC's Shipping List/Delivery Receipts (SLDRs), the Supreme Court ruled that when there is a transfer of title to the buyer or its assignee, VMC is obliged to deliver the same to the said buyer or its assignee, thus:
>
>> "The aforequoted terms and conditions clearly show that petitioner transferred title to the sugar to the buyer or his assignee upon payment of the purchase price. Said terms clearly establish a contract of sale, not a contract to sell. Petitioner is now estopped from alleging the contrary. The contract is the law between the

> contracting parties. And where the terms and conditions so stipulated are not contrary to law, morals, good customs, public policy or public order, the contract is valid and must be upheld. **<u>Having transferred title to the sugar in question, petitioner is now obliged to deliver it to the purchaser or its assignee</u>**."

> In the instant case, VMC cannot deny the fact that when PEPSI assigned its right to claim the remaining 105,000 bags of refined sugar to DHB, the latter is now claiming the right to the refined sugar covered by the subsequent RSDOs. Moreover, it indubitable that VMC has an agreement with PEPSI to deliver the remaining bags of refined sugar for the reason that it already partially performed its obligation to the latter when: 1.) it cancelled RSDO No. 37977 and issued 20 RSDOs to PEPSI; 2.) it delivered 45,000 bags to PEPSI when the latter surrendered RSDO Nos. 38473, 38483-38486, 38487 and 38488; 3.) it received payment of the corresponding tolling fees amounting to Php 10,123,845.76 for hauling the refined sugar. Based on this established fact, VMC is estopped from denying its obligation to DHB to deliver 150,000 bags of refined sugar.

> In other words, DHB's right to claim the 105,000 bags of sugar, covered by the subject RSDOs, comes from PEPSI by virtue of the Deed of Assignment dated 25 June 1997 and not from VMC's certification dated 03 December 1996. Thus, DHB (assignee) steps into the shoes of PEPSI (assignor), the former acquiring the latter's right to claim the 105,000 bags of refined sugar. In essence, **DHB became the creditor of VMC as to the remaining 105,000 bags of refined sugar, by virtue of the Deed of Assignment** and not because of *quasi-contract*."

As above-discussed, we have ruled that VMC is liable to DHB because the latter's right to claim bags of refined sugar covered by subject RSDOs emanates from a valid assignment. Relative to the instant case, we are confronted with a substantially the same issue on whether VMC is liable to LBP based on the subject RSDOs. Applying our ruling in VMC vs. DHB, we find VMC to be liable to deliver 588,716 kilograms of refined sugar covered by the subject RSDOs to LBP. LBP's right to claim the bags of sugar covered by the subject RSDOs comes from the NNMCI's assignment. LBP stepped into the shoes of NNMCI wherein it acquires the latter's right to claim from VMC.

As to VMC's argument on *pactum commissorium*, we are not persuaded. We agree with VMC's allegation that the 588,716 kilograms of refined sugar covered by the subject RSDOs is considered as a contract of pledge. It is clearly established that these bags of sugar were intended to secure NNMCI's loan with LBP.

Pledge is an accessory contract by virtue of which the debtor delivers to the creditor or to a third person a movable[32] or document evidencing

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[32] Article 2094 of the New Civil Code.

incorporeal rights[33] for the purpose of securing the fulfillment of a principal obligation with the understanding that when the obligation is fulfilled, the thing delivered shall be returned with all its fruits and accessions.[34]

Relatedly, *pactum commissorium,* as provided in Article 2088[35] of the New Civil Code, is a stipulation empowering the creditor to appropriate the thing given as guaranty for the fulfillment of the obligation in the event the obligor fails to live up to his undertakings, without further formality, such as foreclosure proceedings, and a public sale. The elements of *pactum commissorium*, which enable the mortgagee to acquire ownership of the mortgaged property without the need of any foreclosure proceedings, are: (1) there should be a property mortgaged by way of security for the payment of the principal obligation, and (2) there should be a stipulation for automatic appropriation by the creditor of the thing mortgaged in case of non-payment of the principal obligation within the stipulated period.[36] In other words, **what is prohibited by Article 2088 is the automatic appropriation by the creditor of the thing pledged** or mortgaged upon failure of the debtor to pay his debt within the period agreed upon by virtue of authority or right previously given the creditor.[37]

However, in the instant case, there is no automatic appropriation of the thing pledged or the bags of refined sugar. It can be seen that LBP still filed its claim with the Commission, as the rehabilitation court. It did not automatically appropriate for itself the bags of refined sugar covered by the subject RSDOs. It undergone the needed procedure as provided by law to enforce its claim with VMC. This could not be considered as "automatic appropriation" because LBP still sought for the Commission to determine its claim against VMC.

In *Martinez vs. Philippine National Bank*[38], the Supreme Court expounded the concept of "automatic appropriation", to wit:

> "In conclusion, we hold that **where a warehouse receipt or *quedan* is transferred or endorsed to a creditor only to secure the payment of a loan or debt, the transferee or endorsee <u>does not automatically become the owner of the goods</u> covered by the warehouse receipt or *quedan* but merely retains the right to keep and with the consent of the owner to sell them so as to satisfy the obligation from the proceeds of the sale**, this for the simple reason that the transaction involved is not a sale but only a mortgage or pledge, and that if the property covered by the *quedans* or warehouse receipts is lost without fault or negligence of the mortgagee or pledgee or the transferee or endorsee of the

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[33] Article 2095 of the New Civil Code.
[34] De Leon, Hector, Comments and Cases on Credit Transactions, 1999 Edition, page 322.
[35] Article 2088 of the New Civil Code. The creditor cannot appropriate the things given by way of pledge or mortgage, or dispose of them. Any stipulation to the contrary is null and void.
[36] Sps. Edralin vs. Philippine Veterans Bank, G.R. No. 168523, 09 March 2011.
[37] De Leon, Hector, Comments and Cases on Credit Transactions, 1999 Edition, page 337.
[38] G.R. No. L-4080. September 21, 1953.

warehouse receipt of *quedan*, then said goods are to be regarded as lost on account of the real owner, mortgagor or pledgor."

Finally, records of the Commission show that, on 29 April 2002, VMC executed a Debt Restructuring Agreement with its creditors. Section 19 thereof expressly provides:

> "19.1 VMC's subsidiary, North Negros Marketing Company, Inc. (Nonemarco) used Refined Sugar Delivery Orders (RSDOs) purportedly issued by VMC to avail of loans from Dao Heng Bank, **Land Bank of the Philippines**, BPI, Metrobank and Asian Bank (the "RSDO Claimants") allegedly in the total principal amount of approxiamately One Billion One Hundred Thirty Four Million Pesos (P1.134 Billion). The RSDO Claimants are asking VMC to either deliver to them the quantity of sugar covered by their respective RSDOs or absorb the debts of Nonemarco. As of date of execution of this Agreement, the RSDO Claims are still subject of a pending litigation before the SEC. However, in the event that VMC shall eventually be held liable by final judgment to pay such RSDO Claims or a portion thereof, VMC shall restructure the RSDO Claims or a portion thereof under the same terms and conditions of the terms of restructuring for VMC's currently UNSECURED CREDITORS. x x x"

WHEREFORE, premises considered, the instant appeal is hereby **DENIED**. The Special Hearing Panel 1's *Order* dated 17 March 2016 is hereby **AFFIRMED with MODIFICATIONS**. VMC is **DIRECTED** to comply with said SHP's *Order* pursuant to Section 19 of the Debt Restructuring Agreement dated 29 April 2002.

SO ORDERED.

Pasay City; 07 March 2017.

TERESITA J. HERBOSA
Chairperson

ANTONIETA F. IBE
Commissioner

EPHYRO LUIS B. AMATONG
Commissioner

BLAS JAMES G. VITERBO *
Commissioner

EMILIO B. AQUINO
Commissioner

*On Official Business