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

IN RE: LDT AGRO INDUSTRIAL HUB CORPORATION AND THE BNP CLIENT PROJECT

SEC CDO Case No. 05-19-048

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT (EIPD),

Movant.

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RESOLUTION

For consideration of the Commission En Banc (En Banc) is the ***APPEARANCE OF COUNSEL WITH URGENT EX-PARTE MOTION FOR EXTENSION OF TIME TO FILE MOTION TO LIFT CDO*** (Ex-Parte Motion)[1] filed by LDT Agro Industrial Hub Corporation (LDT Agro) through counsel, Mario R. Benitez, by mail.

The Ex-Parte Motion prays that "*LDT AGRO INDUSTRIAL HUB CORP. be given fifteen (15) days from today to file, a motion to lift CDO or the proper motion/pleading as may be warranted by the facts*."[2] LDT Agro alleges that one of its officers, a certain Armando Gabriel (Mr. Gabriel) received a copy of the Cease and Desist Order (CDO) on 26 August 2019 from an employee (whose name was not disclosed by LDT Agro) who was "*not authorized nor had the function of receiving mails for Mr. Gabriel*."[3]

LDT AGRO's counsel also averred that relevant documents of the corporation relative to the instant case were yet to be delivered to him and he needs to interview the corporation's officers to know the facts for purposes of filing a motion to lift.

Pursuant to and in compliance with the Order dated 15 October 2019 issued by the Commission, the EIPD filed its ***Comment*** dated 24 October 2019 on 28 October 2019.

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[1] Dated 30 August 2019 and received by the Office of the General Counsel on 6 September 2019.
[2] Last paragraph of the Ex-Parte Motion.
[3] Paragraph 1 of the Ex-Parte Motion.

In its Comment, the EIPD avers that the CDO was properly served to LDT Agro as it was simultaneously served and tendered to the company's Board of Directors – Mr. Marlon G. Ganan on 22 August 2019 and Mr. Aniceto F. Muyot on 23 August 2019. Moreover, the CDO was also posted on the main entrance of LDT Agro's office.

The EIPD also argued and emphasized that the Ex-Parte Motion is a prohibited pleading under Part I, Rule III, Section 3-3 of the 2016 Rules of Procedure of the Securities and Exchange Commission (2016 SEC Rules) and should thus be denied. The EIPD cited the case of Thenamaris Philippines, Inc. vs Court of Appeals where the heavy workload of the counsel was not considered as meritorious reason sufficient to justify the grant of an exception.[4]

Hence, the EIPD prayed that the Ex-Parte Motion be denied.

ISSUE

Whether or not the Ex-Parte Motion should be granted?

DISCUSSION

The En Banc resolves to <u>deny</u> the Ex-Parte Motion.

Part I, Rule III, Section 3-3 (e) of the 2016 SEC Rules categorically provides for the list of prohibited pleadings, to wit:

> "Sec. 3-3. Prohibited Pleadings. – The following pleadings or any submission filed or made under a similar guise or title shall not be allowed:
>
> a. Motion to Dismiss;
> b. Motion for a Bill of Particulars;
> c. Motion for New Trial, or Reopening of Trial;
> d. Petition for relief from judgment;
> e. ***Motion for extension of time to file pleadings***, affidavits, or any other submission of similar intent;
> f. Motion to declare a party in default;
> g. Motion for postponement and any other motions of similar intent; and
> h. Motion for leave to amend pleadings.
>
> Should one be filed, ***said prohibited pleadings or submissions shall be automatically expunged from the records of the case***. However, the

[4] Paragraph 8 of the Comment.

> Operating Department shall order other parties to the action to file their comments or oppositions thereto." (emphasis supplied)

The rationale behind the prohibition is that proceedings before the Commission is summary in nature; the same being imperative to ensure the speedy disposition of cases. The foregoing finds support in the case of Laguna Metts Corp. vs Court of Appeals[5] where the Supreme Court categorically ruled that:

> "Rules of procedure must be faithfully complied with and should not be discarded with the mere expediency of claiming substantial merit. As a corollary, rules prescribing the time for doing specific acts or for taking certain procedure are considered **absolutely indispensable** to prevent needless delays and to orderly and promptly discharge judicial business. By their very nature, these rules are regarded mandatory." (emphasis supplied)

While the Rules recognizes exceptions i.e. "*the Operating Department* ***may*** *consider said pleading or submission as filed in* ***meritorious cases***,"[6] a review and survey of existing and applicable jurisprudence[7] reveal that ***LDT Agro's reason is not considered as one of the acceptable and meritorious circumstances that would warrant the relaxation of the rules***.

On account of the foregoing, the En Banc finds that the reason proffered by LDT Agro in support of the Motion is not meritorious that will warrant the extension of time it pleads. "Although it is true that litigation is not a mere game of technicalities, ***the excuse of "inadvertence owing to heavy work load of counsel" simply cannot justify the relaxation of the procedural rules"***[8], in addition to its being relative and self-serving."[9]

LDT Agro likewise argued that the CDO was received by an employee of Mr. Gabriel who was not authorized to receive mails on the latter's behalf, hence, should not be bound by such alleged eventuality. ***The Commission is not convinced***. The records of the case reveal that ***the CDO was not only served upon Mr. Gabriel's representative, it was also served to the other members of LDT Agro's Board of Directors and was posted in its office premises***.

Part I, Rule IV, Section 4-2 (b) of the 2016 SEC Rules provides that:

> "Service of papers, orders, including formal charges, decision and resolutions emanating from the Commission under these Rules to a juridical **person shall be done by tendering a copy of the same** to its president, managing partner, general manager, corporate secretary, treasurer,

[5] G.R. No. 185220, July 27, 2009
[6] Second sentence, last paragraph of Part I, Rule III, Section 3-3 (e) of the 2016 SEC Rules.
[7] See KKK Foundation, Inc. v. Hon. Adelina Calderon-Bargas (G.R. No. 163785, December 27, 2007); Anama v. Court of Appeals, G.R. No. 187021, January 25, 2012; Piotrowski v. Court of Appeals, G.R. No. 193140, January 11, 2016
[8] Juntilla v. EDI-Staffbuilders International, Inc., G.R. No. 240107 (Notice), August 8, 2018.
[9] Ibid.

compliance officer, in-house-counsel, **director or trustee**, incorporator, or such other officer identified in the latest available records filed with the Commission, its managing or general agent or any other agent authorized by appointment, in any method specified in paragraph (a) of this Section." (emphasis and underscoring supplied)

On the basis of the afore-quoted provision of the 2016 SEC Rules, ***service made to the directors mentioned in the Compliance*** dated 28 August 2019 filed by SEC Special Sheriff, Anthony Glenn C. Pagao, ***was thus service to LDT Agro***.

LDT Agro was apparently aware and has in fact accepted that it was bound by the service made to its directors hence, it prayed in its Ex-Parte Motion that it be given an extended time within which to file the proper pleading. ***LDT Agro was thus fully aware that the five (5) day period within which to file a Motion to Lift under Part II, Rule IV, Sec. 4-3 (c) has already lapsed and the CDO was made permanent by operation of law***.

WHEREFORE, premises considered, the ***APPEARANCE OF COUNSEL WITH URGENT EX-PARTE MOTION FOR EXTENSION OF TIME TO FILE MOTION TO LIFT CDO*** is hereby **DENIED** for lack of merit and basis. Moreover, considering that LDT Agro has not filed any motion for the lifting of the CDO within the period provided under the 2016 SEC Rules, the Cease and Desist Order dated 6 August 2019 is hereby made **PERMANENT**.

SO ORDERED.
Pasay City, Philippines; 23 January 2020.

EMILIO B. AQUINO
Chairperson

EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
Commissioner