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

**ALLIANCE SELECT FOODS INTERNATIONAL, INC.,**

*Appellant,*

*- versus-*

**SEC En Banc Case No. 11-14-350**
Promulgated: 29 September 2022

**ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT (EIPD),**

*Appellee.*

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# DECISION

For consideration is the *Memorandum on Appeal* dated 14 November 2014 (the "Appeal"), filed by Appellant Alliance Select Foods International, Inc. (ASFII) on 21 November 2014, seeking the reversal of the Order dated 28 October 2014 (the "Assailed Order") issued by the Enforcement and Investor Protection Department (EIPD) which imposed upon ASFII a penalty of fine in the amount of One Hundred Thousand Pesos (₱100,000.00), for violation of Article 6(A)(i)(iv) of the Revised Code of Corporate Governance (the "Code").

## RELEVANT FACTS

Acting on the letter-complaints filed by Mr. Necesito U. Sytengco (Mr. Sytengco), the EIPD issued a Show Cause Letter[1] dated 12 September 2014, directing the Board of Directors and Officers of ASFII to explain why no administrative sanction should be imposed against the Corporation for alleged violation of Article 6(A)(i)(iv) of the Code. Mr. Sytengco alleged that ASFII's violation of the Code consisted in its disregard of his rights as a stockholder when he was prevented from attending the annual stockholder's meeting held on 16 June 2014.

In its Letter dated 22 September 2014[2] (the "Written Explanation"), ASFII denied having disregarded the rights of Mr. Sytengco, and explained that

[1] Annex "D" of the Memorandum on Appeal
[2] Annex "E" of the Memorandum on Appeal

the reason for the Corporate Secretary's decision not to admit Mr. Sytengco to the meeting was his rude and abrasive behavior, and for his failure to show proof that he is a stockholder of ASFII.

On 28 October 2014, the EIPD issued the Assailed Order finding ASFII to have violated the Code[3] and directed it to pay the monetary penalty. The EIPD found that ASFFI did not give any explanation, despite having been informed of the possible sanction as to why Mr. Sytengco was barred from attending the stockholder's meeting.

In its Appeal, ASFII alleged that it submitted its Written Explanation[4] which was duly received by the Commission on 23 September 2014 as evidenced by the Barcode Page,[5] contrary to the finding the EIPD. On account thereof, ASFII maintained that the finding of violation of the Code was infirm as it was made in violation of its right to due process, i.e., the EIPD did not consider the Written Explanation filed by ASFII.

In its Manifestation dated 26 November 2014, the EIPD acknowledged that it indeed failed to consider the Written Explanation in passing upon the issue, as the said Written Explanation was not forwarded to it by the Central Receiving Section of the Commission. This notwithstanding, the EIPD adopted and reiterated the contents of Assailed Order, and manifested that it is not filing a Reply Memorandum.

On 15 December 2014, Appellant filed a Counter-Manifestation arguing that the Assailed Order should be reversed as it was issued on the mistaken premise that ASFII failed to submit its Written Explanation.

## ISSUE

Whether the EIPD committed reversible error in penalizing ASFII on the basis of a finding of violation of Article 6(A)(i)(iv) of the Code.

## RULING

We reverse the Assailed Order.

A careful review of the allegations of the complaint will readily show that what Mr. Sytengco was asserting and seeking to enforce, is his right to participate at the annual stockholder's meeting of ASFII, which he allegedly

[3] Annex "G" of the Memorandum of Appeal
[4] Annex "E" of the Memorandum Appeal
[5] Annex "F" of the Memorandum Appeal

claimed to be entitled to as a stockholder. This is supported by the fact that in relation to Mr. Sytengco, the EIPD found ASFII to have violated Section 6 of the Code which provides:

> "A) The Board shall respect the rights of the stockholders as provided for in the Corporation Code, namely:
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> (i) Right to vote on all matters that require their consent or approval;
> (ii) Pre-emptive right to all stock issuances of the corporation;
> (iii) Right to inspect corporate books and records;
> (iv) Right to information;
> (v) Right to dividends; and
> (vi) Appraisal right."

Given the foregoing, the Commission finds that the EIPD committed reversible error in taking cognizance of the complaint, in determining the rights and obligations of the parties, and in penalizing ASFII on the basis of such determination, because the issue presented partakes of the nature of an intra-corporate dispute which is no longer within the jurisdiction of the Commission.

An intra-corporate dispute is understood as suit arising from intra-corporate relations, or between or among stockholders, or between any or all of them and the corporation.[6] To determine if a suit partakes of a nature of an intra-corporate dispute, the Supreme Court has consistently applied the relationship test and the nature of the controversy test, simultaneously, thus:

> To determine whether or not a case involves an intra-corporate dispute, two tests are applied - the relationship test and the nature of the controversy test.
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> Under the relationship test, there is an intra-corporate controversy when the conflict is (1) between the corporation, partnership, or association and the public; (2) between the corporation, partnership, or association and the State insofar as its franchise, permit, or license to operate is concerned; (3) between the corporation, partnership, or association and its stockholders, partners, members, or officers; and (4) among the stockholders, partners, or associates themselves.
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> On the other hand, in accordance with the nature of controversy test, an intra-corporate controversy arises when the controversy is not only rooted in the existence of an intra-corporate relationship, but also in the enforcement of the parties' correlative rights and obligations under the Corporation Code and the internal and intra-corporate regulatory rules of the corporation.

[6] *Strategic Alliance Development Corporation vs Star Infrastructure Development Corporation* (G.R. No. 187872. November 17, 2010)

> Based on the foregoing tests, it is clear that this case involves an intra-corporate dispute. It is a conflict between a stockholder and the corporation, which satisfies the relationship test, and it involves the enforcement of the right of Ozamiz, as a stockholder, to inspect the books of PHC and the obligation of the latter to allow its stockholder to inspect its books."[7]

Applying the foregoing tests to the instant case, it is not difficult to affirm, at a first glance, that the matter subject hereof is intra-corporate in nature. First, the conflict is between a corporation, i.e. ASFII, and its stockholder, i.e., Mr. Sytengco, which satisfies the relationship test. Second, the controversy involves or relates to the enforcement of their respective rights, i.e., from the perspective of Mr. Sytengco is his right to attend the meeting, while from the perspective of ASFII is its right to demand proof of being a stockholder, and to deny attendance to rude and abrasive stockholders. This satisfies the nature of the controversy test.

Relative thereto, we emphasize that under Section 5.2 of the Securities Regulation Code (SRC), the jurisdiction over all cases enumerated under Section 5 of Presidential Decree No. 902-A,[8] which includes intra-corporate disputes, is already with the Regional Trial Court, to wit:

> "The Commission's jurisdiction over all cases enumerated under section 5 of Presidential Decree No. 902-A is hereby transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court: *Provided*, That the Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over the cases. The Commission shall retain jurisdiction over pending cases involving intra-corporate disputes submitted for final resolution which should be resolved within one (1) year from the enactment of this Code. The Commission shall retain jurisdiction over pending suspension of payment/rehabilitation cases filed as of 30 June 2000 until finally disposed."

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[7] *San Jose vs Ozamiz* (G.R. No. 190590. July 12, 2017)

[8] "**Section 5.** In addition to the regulatory and adjudicative functions of the Securities and Exchange Commission over corporations, partnerships and other forms of associations registered with it as expressly granted under existing laws and decrees, it shall have original and exclusive jurisdiction to hear and decide cases involving.

a) Devices or schemes employed by or any acts, of the board of directors, business associates, its officers or partnership, amounting to fraud and misrepresentation which may be detrimental to the interest of the public and/or of the stockholder, partners, members of associations or organizations registered with the Commission.

b) **Controversies arising out of intra-corporate** or partnership relations, between and among stockholders, members, or associates; **between any or all of them and the corporation**, partnership or association of which they are stockholders, members or associates, respectively; and between such corporation, partnership or association and the state insofar as it concerns their individual franchise or right to exist as such entity;

c) Controversies in the election or appointments of directors, trustees, officers or managers of such corporations, partnerships or associations." (Emphasis supplied

Thus, the assumption of jurisdiction over the complaint, and the determination by the EIPD of the matter/issue presented therein, notwithstanding the clear provisions of Section 5.2 of the SRC rendered the Assailed Order null and void for having been issued without jurisdiction. We find this established legal principle reiterated in the case of *Bilag vs Ay-ay,*[9] where the Supreme Court categorically ruled that:

> "**A judgment rendered by a court without jurisdiction is null and void and may be attacked anytime.** It creates no rights and produces no effect. It remains a basic fact in law that the choice of the proper forum is crucial, as **the decision of a court or tribunal without jurisdiction is a total nullity. A void judgment for want of jurisdiction is no judgment at all. All acts performed pursuant to it and all claims emanating from it have no legal effect.** (Emphasis supplied)

In fact, the afore-quoted doctrine was applied by Supreme Court in justifying the nullification of a decision of this Commission which was issued without jurisdiction, to wit:

> "The development of both the concept and application of the *relationship test* and *controversy test* reveals a growing emphasis on the delineated jurisdiction between the SEC and ordinary courts. The delineation is based on the very purpose for which the SEC was granted quasi-judicial powers in the first place. Under PD 902-A, the SEC exercised jurisdiction over intra-corporate controversies precisely because it is a highly-specialized administrative body in specialized corporate matters. It follows, therefore, that where the controversy does not call for the use of any technical expertise, but the application of general laws, the case is cognizable by the ordinary courts. In *Macapalan v. Katalbas-Moscardon,* we said-
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> > It is true that the trend is towards vesting administrative bodies like the SEC with the power to adjudicate matters coming under their particular specialization, to insure a more knowledgeable solution of the problems submitted to them. This would also relieve the regular courts of a substantial number of cases that would otherwise swell their already clogged dockets. But as expedient as this policy may be, it should not deprive the courts of justice of their power to decide ordinary cases in accordance with the general laws that do not require any particular expertise or training to interpret and apply. Otherwise, the creeping take-over by the administrative agencies of the judicial power vested in the courts would render the judiciary virtually impotent in the discharge of the duties assigned to it by the Constitution.[98]
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> Applying these principles to this case, we rule that the SEC does not have jurisdiction to order the cancellation of the sale between Napal and Cruz. It

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[9] G.R. 189950, April 24, 2017

> also has no jurisdiction to cancel Cruz's TCT and order its transfer to NIDSLAND.
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> xxx xxx xxx
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> In this case, the SEC, in rendering the decision, disregarded established law and jurisprudence on the jurisdiction of the SEC. Further, it adjudicated on the rights of Cruz, cancelled the deed of sale, and took away his property without giving him the opportunity to be heard. It is a breach of the basic requirements of due process.
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> xxx xxx xxx
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> Hence, because the SEC Decision was issued with grave abuse of discretion and is therefore void, all acts emanating from it have no force and effect. Thus, the Deed of Conveyance issued pursuant to it has no legal effect."

The foregoing notwithstanding, it does not escape the attention of this Commission that what the EIPD used as basis for its decision is the Manual on Corporate Governance of ASFII, which is a corporate document in the nature of a contract. In this regard, it should be pointed out that SEC Memorandum Circular No. 6, Series of 2009, provides for the Revised Code of Corporate Governance, a document which contains the minimum standards implementing the principles on good corporate governance, intended to be adopted by covered corporations in the conduct of its operations consistent with established and accepted best practices. Hence, while the Code, as embodied in the Manual on Corporate Governance of ASFII, is a source of rights and obligations of shareholders, members, directors, officers of the corporation, the enforcement thereof is now within the exclusive jurisdiction of the RTC.

The requirement for covered corporations to come up and submit their respective Manuals on Corporate Governance is found in Article 9 of the Code which provides that:

> "<u>All covered corporations **shall** establish and implement their corporate governance rules in accordance with this Code</u>. **The rules shall be embodied in a manual** that can be used as reference by the members of the Board and Management. **The manual should be submitted to the Commission** for its evaluation within one hundred eighty (180) business days from the date this Code becomes effective to enable the Commission to determine its compliance with this Code taking into consideration the nature, size and scope of the business of the corporation; provided, however, that corporations that have earlier submitted their manual may, at their option, continue to use the said manual as long as it complies with the provisions of this Code.

**The manual shall be made available for inspection by any shareholder** at reasonable hours on business days."

The foregoing, again, should have alerted the EIPD to exercise prudence and caution in taking cognizance of the complaint considering that what was being enforced by Mr. Sytengco is essentially a contractual right embodied in the Corporate Governance Manual of ASFII, that rendered the matter an intra-corporate dispute which is outside the jurisdiction of the Commission.

**WHEREFORE,** premises considered, the Appeal filed by Alliance Select Foods International, Inc. is hereby **GRANTED**. The *Order* dated 28 October 2014 is hereby **NULLIFIED** for having been issued without jurisdiction.

**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*