Republic of the Philippines
Department of Finance
Securities and Exchange Commission

ABACUS EXPLORATION AND DEVELOPMENT CORPORATION,
Appellant,

versus

SEC En Banc Case No. 02-11-230
For: Review of CRMD's Imposition of Penalty Under SEC Memorandum Circular No. 8 Series 2009

COMPANY REGISTRATION AND MONITORING DEPARTMENT,
Appellee.

DECISION

Before the Commission is the Appeal of Abacus Coal Exploration and Development Corporation (ACEDC) assailing the Letter-Order dated January 19, 2011 of the Company Registration and Monitoring Department (CRMD) directing Appellant to "settle the imposable fine assessed by the Office of the General Accountant (OGA)" for violation of SEC Memorandum Circular No. 8 Series of 2009 consisting of "failing to record in its 2008 and 2009 Financial Statement the issuance of capital stock in exchange of mining rights despite the approval of the increase in authorized capital stock in 2008."

FACTS

ACEDC is a domestic corporation registered with the Commission on November 9, 2007 to engage in commercial exploration and development of coal in the Philippines. It is a wholly-owned subsidiary of Abacus Consolidated Resources and Holdings, Inc. (ACRHI). It has an authorized capital stock of P20 million of which P5 million was subscribed by ACRHI.

On September 23, 2008, ACRHI executed a Deed of Assignment of coal mining rights with appraised value of P 2.7 billion[1] in exchange of ACEDC's P295 million worth of new shares to gain further control of the

---

[1] Round off of P2,693,403,665.00

latter. The valuation of coal mining rights was made by Cuervo Appraisers, Inc., an SEC accredited appraiser.

On November 13, 2008, ACEDC filed with the Commission an application to increase its authorized capital stock from P 20 million to P 300 million which was subsequently approved by the Commission on December 24, 2008. The issuance of P295 million worth of new shares was fully subscribed and paid by ACRHI by way of assignment of coal mining rights.

In sum, ACRHI's total subscription[2] to ACEDC's shares in exchange of its coal mining rights are as follows:

Shares (₱ 0.01 Par)	Value	Description
1,500,000,000 Shares	P 15,000,000.00	From the remaining unsubscribed capital stock of ACEDC
28,000,000,000 Shares	P 280,000,000.00	SEC-approved increase in ACEDC's authorized capital stock from P 20,000,000.00 to P 300,000,000.00
29,500,000,000 Shares	P 295,000,000.00	Total Subscription of ACRHI in exchange of coal mining rights

ACEDC filed its 2008 audited financial statements on May 7, 2009, and its 2009 audited financial statements on May 7, 2010, respectively.

In both 2008 and 2009, Appellant did not record in its Balance Sheet the increased capital stock and the acquired coal mining rights. Instead, Appellant disclosed this information in the Notes to Financial Statements.

On November 30, 2010, Appellant received from the CRMD a Notice of Conference to show cause why it should not be penalized for material deficiencies and material misstatements in its 2008 and 2009 audited financial statements.

Despite Appellant's explanation in the conference, the CRMD through an Order dated January 19, 2011 directed Appellant to settle the

[2] Deed of Assignment dated September 23, 2008

imposable fine assessed by OGA for violation of SEC Memorandum Circular No. 8 Series of 2009, summarized below:

Report	1/10 of 1% of the amount of misstatement, whichever is higher	Penalty imposable on ACEDC[3]
2008 AFS	Stockholder's equity and total assets are understated by P295,000,000.00	P295,000.00
2009 AFS	Stockholder's equity and total assets are understated by P295,000,000.00	P295,000.00
Total		**P590,000.00**

Appellant timely filed its Appeal on February 28, 2011 where it raised the following grounds:

a. Appellant did not commit material misstatements in its 2008 and 2009 financial statements, insofar as the execution of the Deed of Assignment of Mining Rights in Exchange for Shares of Stock on 23 September 2008 is concerned.

b. Appellant did not make a quantitative disclosure for the acquisition of mining rights and of the share in exchange for mining rights in its 2008 and 2009 financial statements due to a conflict between accounting standards, on the one hand, and the SEC's approval of Appellant's recording of mining rights implicit in the SEC's 24 December 2008 approval of Appellant's application for increase in capital stock, on the other, in order to avoid making misleading statements or misrepresentations. Nevertheless, for the sake of transparency Appellant still made a qualitative disclosure of both the acquisition of mining rights and the share issuance. Appellant thereby exercised prudence and conservatism in accordance with SRC Rule 68 and should not be deemed to have committed material misstatements in its 2008 and 2009 financial statements.

On March 1, 2011, the Commission *En Banc* issued an Order directing the CRMD to file its Reply to Appellant's Memorandum on

[3] Based on SEC Memorandum Circular No. 8, Series of 2009.

Appeal dated February 25, 2011. Since there is no record of any Reply, Appellee is deemed to have waived its right to file the same.

Based on the foregoing, the following are the key issues for the resolution of this appeal.

ISSUES

I. Whether Appellant committed material deficiencies in its 2008 and 2009 audited financial statements; and

II. Whether Appellant committed material misstatements in its 2008 and 2009 audited financial statements.

DISCUSSION

Material Deficiencies in the Appellant's 2008 and 2009 Audited Financial Statements

The following shall be considered a material deficiency[4] in the financial statements:

(i) Any of the following is not submitted with the FS:

(1) Balance Sheet;
(2) Income Statement of Statement of Receipts and Disbursements;
(3) Cash Flow Statement;
(4) Statement of Changes in Equity or Fund Balance;
(5) Notes to Financial Statements;
(6) Statement of Management's Responsibility;
(7) Auditor's Report.

(ii) The following shall likewise render the financial statements significantly not compliant;

(1) If a listed company, public company, mutual fund or issuer of securities to the public, the auditor's opinion is qualified due to a deviation from the applicable financial reporting framework. However, for listed banks, a qualified opinion of the external auditor shall not be considered a non-compliance with SRC Rule 68 if the

[4] SEC MC No. 8, Series of 2009

qualification pertains to a deviation adopted by the Bangko Sentral ng Pilipinas as part of its prudential reporting requirements;

(2) The auditor's report is substantially not compliant with the wording prescribed by Philippine Standards on Audities (PSA) No. 700, as revise, and other applicable auditing standards and practices.

(iii) The Statement of Management's responsibility is not signed by the prescribed signatories and/or not notarized in the case of a listed or public company;

(iv) There is no accounting policy for a significant account;

For purposes of these Guidelines a significant account means a Balance Sheet or Income Statement Item, the amount of which is equivalent to:

For listed companies, public companies, mutual funds, other issuers of securities to the public, and pre-need companies

(1) 5% or more of Total Current asset, if it is one of the current asset items;
(2) 5% or more of Total Non-Current Liabilities, if it is one of the non-current asset items;
(3) 5% or more of Total Current Liabilities, if it is one of the current liabilities items;
(4) 5% or more of Total Long-Term Liabilities, if it is one of the long-term liabilities;
(5) 5% or more of Total Stockholder's Equity, if it is one of the equity items or the amount of Total Assets if there is capital deficiency;
(6) 5% or more of the Gross Income, Cost of Sales/Services or the Total Operating Expenses, as may be applicable.

For all other corporations, the threshold shall be 10% or more of the items mentioned above.

(v) **The required disclosures or presentations under the applicable financial reporting framework and SRC Rule 68/68.1 for a significant account are not provided in the financial statements.** In case, however of disclosures on related party transactions required under PAS 24, any deficiency thereof shall be considered significant regardless of the amount involved if the reporting company is a public company, listed company, issuer of securities to the public or secondary licensee of the Commission.

(vi) Five of more of the following minor deficiencies are noted:

(1) The financial statements are not presented in prescribed comparative format;
(2) There is no distinction between the current and non-current portion of assets of liabilities except in cases where PAS 1 allows non-classification;
(3) There are no cross-references to the notes to financial statements;
(4) The number of disclosure items that are not provided for significant account does not exceed two;
(5) The Statement of Management's Responsibility is not in full conformity with the prescribed wording of SRC Rule 68 or 68.1;
(6) Such other deficiencies as the Commission may consider minor.

Appellant, in its Appeal Memorandum admitted that it refrained from indicating the amount or value of the mining rights as well as the corresponding amount or value of the shares issued in exchange for the mining rights in both the Balance Sheet and Notes to Financial Statements.

The following disclosures appear in Appellant's 2008 and 2009 Notes to Financial Statements.

Note 5[5]:

Deferred coal exploration costs pertain to exploration expenditures incurred for the exploration and administration of coal mining property situated in Tago and Marihatag, Surigao del Sur.

COC 148 was originally granted by the Philippine Government through the DOE on January 10, 2007 to ACRHI. On September 23, 2008, the COC was transferred by ACRHI in exchange for the company's shares.

Note 7[6]:

[5] 2008 and 2009 Notes to financial statements of ACEDC
[6] 2008 notes to financial statements of ACEDC

> As of December 31, 2008 and 2007, the number of shares subscribed and issued and outstanding totaled 554,751,200 and 250,000,000 shares at par value of P0.01, for a total amount of P5,547,512, and P2,500,000, respectively.
>
> During the year, the Company increase its authorized share capital from P20,000,000 divided into 2,000,000,000 shares to P300,000,000 divided into 30,000,000,000 shares with a par value of P0.01. The increase was approved by the SEC on December 24, 2008.
>
> Note 7[7]:
>
> As of December 31, 2009 and 2008, the number of shares subscribed issued and outstanding totaled 554,751,200 shares at a par value of P0.01, for a total amount of P5,547,512, respectively.
>
> In 2008, the Company increase its authorized share capital from P20,000,000 divided into 2,000,000,000 shares to P30,000,000,000 shares with a par value of P0.01. In relation to the increase, the Company paid documentary stamp taxes amounting to P1,475,000.

The above-stated disclosures made by the Appellant in its Notes to Financial Statements are incomplete/deficient not only for the missing amounts or values but also for failure to make a clear connection to the Deed of Assignment of Mining Rights by ACHRI in Exchange for Appellant's Shares of stock worth P295 million.

Thus, Appellant committed material deficiencies by incomplete/deficient disclosures for significant accounts in its audited financial statements which constitute a violation of the SEC Memorandum Circular No. 8, Series of 2009.

Material Misstatements in the Appellant's 2008 and 2009 Financial Statements

The following shall be considered a material misstatement[8] in the financial statements:

(1) An accounting policy for a significant account is not consistent with PRS or GAAP, e.g., for non-publicly accountable entities or pre-need companies;
(2) An accounting policy for significant account is not consistently applied between periods or to similar transactions and events (inconsistent application); or

---
[7] 2009 notes to financial statements of ACEDC
[8] SEC MC No. 8, Series of 2009

(3) The estimate or assumption used on a significant account is unreasonable and resulted to material misstatement of the financial statements;
(4) There is more than one (minor) misstatement and the aggregate amount involved for said misstatement meets the test of materiality;
(5) The financial statements of a corporation with a subsidiary or subsidiaries are not presented on a consolidated basis in violation of PAS 27;
(6) Such other misstatements in the financial statement, i.e., overstatement or understatement of income, asset, liability, or equity, that the Commission may consider material.

Information is material if its omission or misstatement could influence the economic decisions of users taken on the basis of the financial statements.[9]

The Appellant's 2008 and 2009 audited financial statements show that the Appellant failed to record the issuance of capital stock in exchange of the mining rights despite the Commission's approval of the increase of its authorized capital stock in 2008. This resulted in the understatement of its Stockholder's Equity. Further, it did not capitalize the amount or value of the mining rights acquired in exchange of the shares issued to ACRHI. Although the Appellant properly expensed the exploration costs of the mineral resources, it failed to capitalize/recognize the corresponding intangible asset or the mining rights itself which resulted in the understatement of its Total Assets. According to OGA, Appellant's 2008 and 2009 audited financial statements have been misstated each by P295,000,000. Appellant's Balance Sheet as of December 31, 2009 and 2008 shows the following:

	2009	**2008**
	ASSETS	
Current Assets		
Cash	99,144	124,843
Other Receivable	20,000	20,000
Advances to related party	8,200,000	8,200,000
Total Current Assets	8,319,144	8,344,843
Non-Current Assets		
Deferred coal exploration costs	6,681,872	6,681,872
Other non-current asset	5,428	4,984
Total Non-Current Assets	6,687,300	6,686,856

[9] SRC Rule 68, as amended

Total Assets	15,006,444	15,031,699

	LIABILITIES and EQUITY	
Current Liabilities		
Accrued expenses and other payables	240,892	1,421,086
Advances from a related party	2,219,520	2,229,520
Income Tax Payable	-	36
Total Current Liabilities	2,460,412	3,650,642
Equity		
Share Capital	5,547,512	5,547,512
Advances from the parent repayable in equity shares	9,924,508	6,728,726
Deficit	(2,925,988)	(895,181)
Total Equity	12,546,032	11,381,057
TOTAL LIABILITIES AND EQUITY	15,006,444	15,031,699

Thus, Appellant committed material misstatements by understating the asset and equity accounts in its 2008 and 2009 audited financial statements which constitute a violation of the SEC Memorandum Circular No. 8, Series of 2009.

Lastly, the supposed conflict between accounting standards (PFRS 6 and PAS 38) covering exploration for and evaluation of mineral resources mentioned by the Appellant is irrelevant as there was already a Commission-approved increase of authorized capital stock before the issuance of its audited financial statements. The values of the mining rights and the shares issued to ACHRI were readily available for reporting. The Appellant disregarded the approved increase when it did not recognize the value of the mining rights as an asset and the value of the shares issued in exchange for the mining rights as an equity.

In view of the foregoing discussions on the issues on appeal, the Commission does not find any reason to overturn the assailed Order of the CRMD. However, there is a need to re-compute the penalty imposable to the Appellant. The penalty being appealed was computed based on the total amount of par value shares issued in exchange at P295 million without considering the fair value market value (FMV) of the mining rights. The OGA used the amount of P295 million in the computation of the penalty imposed by CRMD based on the representation of ACEDC that such amount is the fair market value of the mining rights. After re-evaluation[10], the OGA confirmed that the penalty should be based on the misstatements of asset (mining rights) and equity (issued shares and APIC) which is equivalent to the total fair value of mining rights assigned to ACEDC amounting to P2.7 billion which was not recorded and disclosed in the Audited Financial Statements. Following the Commission's scale of fines[11], the penalty should be 1/10 of 1% of the appraised value of P 2.7 billion subject to the maximum penalty cap of P1 Million[12] per year of misstatement.

WHEREFORE, premises considered, the instant appeal is hereby DENIED for lack of merit. The Order of the CRMD dated 19 January 2011 is hereby AFFIRMED with MODIFICATION as to imposable penalty. Appellant is now hereby ordered to pay the fine of P1 Million per year of misstatement, or a total of P2 Million, pursuant to Section 54.1 (ii) of Republic Act No. 8799, otherwise known as the Securities Regulation Code (SRC), for the material deficiencies and material misstatements in its 2008 and 2009 Audited Financial Statements. The Appellant is hereby ordered to correct its 2008 and 2009 Audited Financial Statements to reflect the total misstatements of asset and equity amounting to P2.7 billion. Further, the CRMD-FAAD is hereby directed to investigate the misstatements carried forward to succeeding audited financial statements and if necessary impose additional penalties until such are corrected.

SO ORDERED.

Pasay City, Philippines; 16 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

---

[10] Memorandum of OGA addressed to OGC dated 31 May 2019, Subject: Re-evaluation of Abacus Coal Exploration and Development Corporation Regarding Imposition of Penalty
[11] SEC Memorandum Circular No. 8, Series of 2009
[12] Section 54.1 (ii) of the Securities Regulation Code