Republic of the Philippines

Securities and Exchange Commission

SEC Bldg. EDSA, Greenhills, Mandaluyong City

In the Matter of Splash Holdings, Inc.

SEC En Banc Case No. 07-09-170

Re: Waiver or Reduction of Penalty

Splash Holdings, Inc.,
Appellant.

x---------------------------x

DECISION

For consideration of the Commission *En Banc* is the appeal filed on 20 July 2009 by SPLASHHOLDINGS, INC. ("SPLASH HOLDINGS") for the *waiver or reduction of the penalty* in the amount of ONE MILLION SIX THOUSAND THREE HUNDRED PESOS (Php1,006,300.00) assessed by the Corporation Finance Department ("CFD") of the Commission, for its failure to file its *Statement of Changes in Beneficial Ownership of Securities* (SEC Form 23-B) when it disposed of thirty million three hundred three thousand and thirty one (30,303,031)[1] shares in SPLASH CORPORATION ('SPLASH CORP."), in violation of Section 23.1[2] of the Securities Regulation Code ("SRC")[3] and of the SRC Rule 23 (1) (B) of the SRC's Implementing Rules and Regulations.

---

[1] Transaction .was done on 24 December 2008 via Block Sale (Source: SEC Market Regulations Department).

[2] SRC Section 23.1. provides:

SEC.23. *Transactions of Directors, Officers and Principal Stockholders.*

23.1. Every person who is directly or indirectly the beneficial owner of more than ten *per centum* (10%) of any class of any equity security which satisfies the requirements of Subsection 17.2, or who is a director or an officer of the issuer of such security, shall file, at the time either such requirement is first satisfied or within ten days after he becomes such a beneficial owner, director, or officer, a statement with the Commission and, if such security is listed for trading on an Exchange, also with the Exchange, of the amount of all equity securities of such issuer of which he is the beneficial owner, and within ten (10) days after the close of each calendar month thereafter, if there has been a change in such ownership during such month, shall file with the Commission, and if such security is listed for trading on an Exchange, shall also. file with the Exchange, a statement indicating his ownership at the close of the calendar month and such changes in his ownership as have occurred during such calendar month.

[3] Republic Act No. 8799 (2000).

FACTS OF THE CASE

Appellant SPLASH HOLDINGS is a stock corporation with registration number A1997-02443, registered with the Commission on 07 February 1997.[4] SPLASH CORP. is a stock corporation with registration number ASO91-196206, registered with the Commission on 01 January 1991.

On 24 December 2008, SPLASH CORP. bought back thirty million three hundred three thousand and thirty one (30,303,031) shares from appellant SPLASH HOLDINGS ("buy back transaction").

On 15 January 2009, the Commission's Corporation Finance Department ("CFD") wrote[5] Splash Holdings (with the notation, "2nd offense") that it has not yet filed its *Statement of Changes in Beneficial Ownership of Securities* (SEC Form 23-B) in relation to the buy back transaction, in violation of SRC Rule 23 (1) (B), which provides:

> Reports to be Filed by Directors, Officers and Principal Stockholders
>
> 1. Every person who is directly or indirectly the beneficial owner of ten percent (10%) or more of any class of any security of a company which satisfies the requirements of Subsection 17.2[6] of the Code, or who is a director or an officer of the issuer of such security, shall:

---

[4] When it was registered with the Commission on 07 February 1997, its name was *Splash Group Management Corporation*; on 16 September 1997, its name was changed to *Splash Group Holdings Corporation* (Certificate of Filing of Amended Articles of Incorporation dated 16 September 1997) ; it was on 3 July 1998 when the name was changed to *Splash Holdings, Inc.*, (Certificate of Filing of Amended Articles of Incorporation dated 3 July 1998) but on 28 September 2001 this was changed to *RNR Holdings, Inc.* (Certificate of Filing of Amended Articles of Incorporation dated 28 September 2001); however this was again changed to *Splash Holdings, Inc.* on 5 January 2005 (Certificate of Filing of Amended Articles of Incorporation dated 5 January 2005); and on 20 April 2010 the name was changed to *Ang•Hortaleza Corporation* (Certificate of Filing of Amended Articles of Incorporation dated 20 April 2010).

[5] Memorandum on Appeal filed on 20 July 2009, Annex "3."

[6] SEC. 17. *Periodic and Other Reports of Issuers.*

17.1. Every issuer satisfying the requirements in Subsection 17.2 hereof shall file with the Commission:

a) Within one hundred thirty-five (135) days, after the end of the issuers fiscal year, or such other time as the Commission may prescribe, an annual report which shall include, among others, a balance sheet, profit and loss statement and statement of cash flows, for such last fiscal year, certified by an independent certified public accountant, and a management discussion and analysis of results of operations; and

b) Such other periodical reports for interim fiscal periods and current reports on significant developments of the issuer as the Commission may prescribe as necessary to keep current information on the operation of the business and financial condition of the issuer.

17.2. The reportorial requirements of Subsection 17.1 shall apply to the following:

a) An issuer which has sold a class of its securities pursuant to a registration under Section 12 hereof: *Provided, however,* That the obligation of such issuer to file reports shall be suspended for any fiscal year after the year such registration became effective if such issuer, as of the first day of any such fiscal year, has less than one hundred (100) holders of such class of securities or such other number as the Commission shall prescribe and it notifies the Commission of such;

xxx

B. within ten (10) days after the close of each calendar month thereafter, if there has been any change in such ownership during the month, file a statement with the Commission, and with an Exchange if the security is listed on that Exchange, on Form 23-B indicating his ownership at the close of the calendar month and such changes in his ownership as have occurred during that calendar month; xxx

Considering that the 15 January 2009 letter remained unattended and that the appellant continuously failed to file SEC Form 23-B, the CFD issued an assessment letter dated 23 February 2009 directing appellant to pay a partial penalty of ONE MILLION FOUR THOUSAND EIGHT HUNDRED PESOS AND TWO CENTAVOS (Php1,004,800.02).[7] Splash Holdings was further advised to file said report to stop accrual of said penalty.[8]

In a letter dated 05 March 2009, appellant requested reconsideration for the reason that it is a dormant company, and does not have the personnel who monitors its day-to-day operations. Further, appellant alleged that as the holding company of the Splash Group, it has been inactive, that is why the filing of SEC Form 23-B was not made. Attached to the letter was the accomplished SEC Form 23-B, filed on 05 March 2009.[9]

CFD informed appellant in a letter dated 23 March 2009[10] that the reason cited in its 05 March 2009 letter is without merit, because reporting companies are mandated to strictly comply with the reportorial requirements. As of date of letter, appellant was assessed by CFD a total penalty of ONE MILLION SIX THOUSAND THREE HUNDRED PESOS AND TWO CENTAVOS (Php1,006,300.02), computed as follows:

Frequency of Violation	Basic Penalty	No. of Days of Delay	Penalty for Each Day of Delay	Total Penalty
2nd offense	P 1,000,000.02	63	P 100.00	Php 1,006,300.02

---

b) An issuer with a class of securities listed for trading on an Exchange; and
c) An issuer with assets of at least Fifty million pesos (P50,000,000.00) or such other amount as the Commission shall prescribe, and having Two hundred (200) or more holders each holding at least One hundred (100) shares of a class of its equity securities: *Provided, however,* That the obligation of such issuer to file reports shall be terminated ninety (90) days after notification to the Commission by the issuer that the number of its holders holding at least one hundred (100) shares is reduced to less than One hundred (100).

[7] 1% of the amount of each purchase or disposition, or P 10,000.00 per transaction, whichever is higher plus P100.00 per day of delay (cut-off date was 17 February 2009).
[8] Reply Memorandum filed 28 August 2009, p. 2.
[9] Memorandum on Appeal filed on 20 July 2009, Annex "5."
[10] *Op.cit.*, Annex "D."

In addition, CFD warned that failure to settle the assessed penalty within five (5) days from receipt of letter shall constrain CFD to refer the matter to the Compliance and Enforcement Department of the Commission for appropriate action.

Hence, this appeal.

ISSUE

Whether there is a valid ground to justify the waiver or reduction of the penalty imposed against Splash Holdings, Inc.

RULING

The petition is unmeritorious.

In its Memorandum on Appeal filed on 20 July 2009, appellant alleged that an examination of all the documents it has submitted to the CFD as well as those filed with the Philippine Stock Exchange ("PSE") shows that it has *substantially complied* with Section 23 of the SRC and SRC Rule 23.[11]

Appellant claims that all the material information pertaining to the buy-back transaction between Splash Holdings and Splash Corp. have been fully disclosed by Splash Corp. to CFD [12] in the letter of Splash Corp. to CFD dated 13 January 2009 where it disclosed additional information regarding the buy-back transaction, as follows: a) Appellant would use the proceeds of the sale to fulfill its obligation as guarantor of P.T. Splash Indonesia's notes payable to Splash Corp.; b) Prior to the sale of the shares, appellant owned 522,312,245 shares or 72.4% in Splash Corp. then it was reduced to 492,009,214 shares or 71.2%; and c) Appellant received ONE HUNDRED MILLION PESOS (P100,000,000.00) for the sale of 30,303,031 Splash Corp. shares at P3.30 per share.[13]

In addition, the buy-back transaction was reported by appellant Splash Holdings when it filed with the CFD the Current Report (SEC Form 17-C) on 05 January 2009;[14] Further, appellant avers that its submission of documents on all the material information regarding the sale to the Disclosure Department of the PSE, and the public disclosure of the same through the PSE's Online Disclosure System should be considered as *substantial compliance* with the subject SRC reportorial requirements.[15]

---

[11] Memorandum on Appeal filed on 20 July 2009, par. 6.8.
[12] *Id.*, par. 6.9.
[13] *Id.*, par. 4.9.
[14] *Id.*, par. 4.6.3; Reply Memorandum filed 28 August 2009, p. 5.
[15] *Id.*, par. 6.20-6.22.

Appellant insists that the compliance with reportorial requirements under a particular law need not be done through the forms issued or prescribed by the implementing agency,[16] and cited *Securities and Exchange Commission vs. Interport Resources Corporation, et al.*,(the "Interport Case").[17] However, reliance on said case is misplaced. In the Interport Case, the "xxx Court of Appeals ("CA") ruled that absent any implementing rules for Sections 8, 30 and 36 of the Revised Securities Act, no civil, criminal or administrative actions can possibly be had against the respondents without violating their right to due process and equal protection xxx." But the Supreme Court reversed the CA and stated that "Sections 8, 30 and 36 of the Revised Securities Act do not require the enactment of implementing rules to make them binding and effective." Thus, while there was an *absence of implementing rules* in the Interport Case, the issue here is compliance with the *existing implementing rules*, specifically, SRC Rule 23 (1) (B) of the SRC's Implementing Rules and Regulations.

Appellant likewise depended on *Quimpo vs. Mendoza*, (the "Quimpo Case")[18] quoting, "xxx simple logic, fairness, and reason cannot countenance an exaction or a penalty for an act faithfully done in compliance with the law."[19] Unfortunately, the Quimpo Case is about real estate taxes. Prior to the sentence lifted by appellant from the text of the case, the Supreme Court wrote, "We rule for the petitioner, following the general rule in the interpretation of tax statutes that such statutes are construed most strongly against the government and in favor of the taxpayer."[20] However, the issue in this case is compliance with the rules of the Commission, which is a government regulatory body, thus the principle in interpreting tax statutes cannot be applied to the case at bar.

In sum, the principal argument of the appellant is that they have *substantially complied* with Section 23 of the SRC and SRC Rule 23, because Splash Corp. has made disclosures in its 13 January 2009 letter, Splash Holdings has filed SEC Form 17-C on 5 January 2009, Splash Corp. has submitted disclosure documents to the PSE, and appellant has disclosed all material information to the Online Disclosure System of the PSE.

We disagree. A careful analysis of the information required by SEC Form 17-C and SEC Form 23-B reveals that the difference lies not in form, but in substance.

---

[16] Id., par.6.18.
[17] G.R. No. 135808 (October 6, 2008).
[18] 107 SCRA 73 (No. L-33052 August 31, 1981).
[19] Memorandum on Appeal filed on 20 July 2009, par. 6.18.
[20] *Op. cit.*, p.82.

SEC Form 17-C submitted by Splash Corp. contains the following information:

Date of Transaction	Number of Shares Bought	Price Per Share	Outstanding Shares After Transaction	Treasury Shares After Transaction
24 Dec 2008	30,303,031	3.30	691,290.326	54,870,031

As noted by the CFD,[21] the disclosure made by Splash Corp. in SEC Form 17-C does not comply with SRC Rule 23 (1) (B) because the information contained in SEC Form 17-C is insufficient compared to the required information in SEC Form 23-B which requires the following details:

Class of Equity	Transaction Date	Amount and Price of Securities Acquired or Disposed	Percentage and Number of Shares Owned at the End of the Month	Ownership Form	Nature of Indirect Beneficial Ownership

CFD further observed that taken together with the information disclosed in the 13 January letter of Splash Corp., the disclosures are still incomplete. CFD further stressed that it is appellant Splash Holdings and not Splash Corp. which is required to file subject SEC Form 23-B. CFD also noted that the Statement of Changes in Beneficial Ownership (SEC Form 23-B) filed by Splash Holdings on March 5, 2009 was not properly accomplished. Consequently, in a letter dated 24 August 2009, CFD directed appellant Splash Holdings to amend the same to fully comply with SRC Rule 23 (1) (B).[22]

The penalty imposed by CFD[23] on appellant is indisputably justified, for CFD merely applied SEC Memorandum Circular No. 6, Series of 2005 (the "Circular"). The Circular prescribes that a second violation of SRC Rule 23 (1) (B) is subject to a penalty of 1% of the amount of each purchase or disposition, or TEN THOUSAND PESOS (Php10,000.00) for every transaction, whichever is higher, plus ONE HUNDRED PESOS (Php100.00) per day of delay. Thus, when appellant filed its Statement of Beneficial Ownership (SEC Form 23-B) on 5 March 2009,[24] CFD computed the penalty as follows:

[21] Reply Memorandum filed 28 August 2009, p. 5.
[22] Id., p. 6.
[23] Id. pp.6-7.
[24] It should have been filed within ten (10) days after the close of each calendar month thereafter, if there has been any change in such ownership during the month, file a statement with the Commission, and with an Exchange if the security is listed on that Exchange, on Form 23-B indicating his ownership at the close of the calendar month and such changes in his ownership as have occurred during that calendar month; SRC Rule 23 (1) (B).

Basic Penalty

Amount of Disposition (30,303,031 shares x 3.30 per share)	P100,000,002.3
	x 1%
	P1,000,000.02
Add: Daily Penalty P 100.00 x 63 days	6,300.00
Total Assessed Penalty	**P1,006,300.02**

WHEREFORE, premises considered, the instant appeal is hereby **DENIED** for lack of merit.

SO ORDERED.

Mandaluyong City, 20 January 2011.

FE B. BARIN
Chairperson

MA. JUANITA E. CUETO
Commissioner

RAUL J. PALABRICA
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

ELADIO M. JALA
Commissioner