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

IN THE MATTER OF:
PESOKWENTO.

SEC CDO CASE NO. 03-22-084
Promulgated: 19 July 2022

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT (EIPD),

Movant.

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RESOLUTION

For consideration of this Commission is the Verified Motion to Lift Cease and Desist Order Dated 22 March 2022 (the "Motion to Lift") filed[1] by PESOKWENTO, through counsel, praying that the Commission lifts the *Cease and Desist Order* dated 22 March 2022 (the "Assailed CDO"), the dispositive portion of which reads:

> "WHEREFORE, premises considered, **PESOKWENTO**, PONDO CASH, TBAG, CASH SKY, LOAN CASH, and EAST CASH, its owners, operators, promoters, representatives, agents AND ANY AND ALL PERSONS CLAIMING AND ACTING FOR AND IN THEIR BEHALF, are hereby ORDERED to immediately CEASE AND DESIST from engaging in, carrying out, promoting and facilitating any lending activity /transaction until they have incorporated and have secured from this Commission the requisite Certificate of Incorporation and Certificate of Authority to Operate as Lending Companies or Financing Companies.
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> **PESOKWENTO**, PONDO CASH, TBAG, CASH SKY, LOAN CASH, and EAST CASH, its owners, operators, promoters, representatives, agents and any and all persons acting for and, on their behalf, are also directed to immediately CEASE and DESIST from offering and advertising their lending business through the internet or any other media, and to delete

[1] Dated 4 April 2022 which was received by the Commission on 7 April 2022

/remove any and all materials involving or covering the same."

RELEVANT FACTS

On 8 March 2022, the EIPD filed before the Commission *En Banc*, through the Office of the General Counsel, a Motion for Issuance of a Cease and Desist Order (the "Motion") against online lending operators/applications, which were found to be in violation of Republic Act. No. 9474 (the "Lending Company Regulation Act of 2007"), and the relevant regulations issued by the Commission. PESOKWENTO was included in the Motion as one of the online lending operators/applications that was found to have violated the relevant regulations.

On 22 March 2022, the Commission *En Banc* issued the *Assailed CDO* after finding, based on substantial evidence, that the online lending operators/applications, including PESOKWENTO were either engaged in lending and/or financing business without being a corporation, and/or operating as such without the required Certificate of Authority, and/or have violated the relevant regulations issued by the Commission. In relation to Movant PESOKWENTO, the Commission specifically found that it violated Memorandum Circular Nos. 18 and 19, series of 2019.

On 07 April 2022, PESOKWENTO filed the instant Motion to lift where it categorically and vehemently denied the allegation that it violated the Lending Company Regulation Act of 2007, arguing that SUPER-SPACE PH LENDING INC. ("Super-Space" for brevity) which owns and operates the online lending platform known as PESOKWENTO (a business name of Super-Space) is a corporation duly registered with the Commission, having been issued a Certificate of Incorporation and Certificate Authority to Operate as a Lending Companies or Financing Companies.[2] PESOKWENTO also alleged that Super-Space submitted an *Affidavit of Compliance*[3] dated 06 September 2022 where it declared that PESOKWENTO is an online lending platform owned by it, and is merely a business name.[4] Thus, movant argued that it may lawfully engage in any lending activity, and the enforcement of the CDO against it was not warranted.

In its *Comment/Opposition,* the EIPD prayed that the Commission denies the Motion to Lift on the ground that while Super-Space is a duly registered corporation with a Certificated of Authority to Operate as a

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[2] Par. 11 of the Motion to Lift (see Annex "B")
[3] Par. 8 of the Motion to Lift (see Annex "A")
[4] Par. 8 of the Motion to Lift

Lending Company, it nonetheless operated PESOKWENTO in violation of SEC Memorandum Circular No. 19, Series of 2019[5] (SEC MC No. 19).

ISSUE

Whether the arguments and the evidence presented in the Motion to Lift warrant the issuance of an order lifting the Assailed CDO.

RULING

The Commission resolves to deny the *Motion* for want of merit.

At the outset, it should be pointed out that in the Assailed CDO which PESOKWENTO seeks to be lifted in so far as it is concerned, the Commission used as basis not only the Lending Company Regulation Act of 2007, but also the relevant circulars/regulations that were issued relating to the operation of lending or financing business.

In our jurisdiction, the existing legislations[6] which regulate the lending and financing business all embody provisions where the State expressly recognizes the essential and critical role of financing and lending companies in the development of the national economy, because they provide medium and long term credits for investments needed in starting a business, or in growing and developing an existing one. It is in this context that the State deemed it necessary to regulate their operations, to ensure that just like other financial institutions, the same are sound, competitive, stable, and efficient. Moreover, it should be emphasized that these legislations were intended, among others, to curtail or prevent acts or practices that are prejudicial to the public interest.

As the agency mandated to implement the provisions of the Lending Company Regulation Act of 2007, the Commission issued, among others, Memorandum Circular No. 18 s. 2019 (MC 18) which prohibits unfair debt collection practices, and Memorandum Circular No. 19 s. 2019 (MC 19) which required lending and financing companies to fully disclose in their advertisements and online lending platforms the

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[5] SEC Memorandum Circular No. 19, Series of 2019 (Disclosure Requirements on Advertisements of Financing Companies and Lending Companies and Reporting of Online Lending Platforms).

> SEC. 1. Required Disclosures. - FCs and LCs shall fully disclose in their Advertisements and Online Lending Platforms the following:
> A. Corporate Name, SEC Registration Number and Certificate of Authority to Operate a Financing/Lending Company (CA) Number in a conspicuous portion of their Advertisements and Online Lending Platforms; and
> B. An advisory for their prospective borrowers to study the terms and conditions in the Disclosure Statement before proceeding with the loan transaction.

[6] Republic Act. No. 9474, Republic Act No. 5980 (the "Financing Company Act of 1998"), Republic Act. No. 3765 (the "Truth in Lending Act")

information prescribed therein, and to report all their existing online lending platforms. The Commission also issued Memorandum Circular No. 10, s. 2021 (MC 10) which imposed a moratorium on the registration of new online lending platforms including existing lending companies that will engage in the same, and only allowed the operation of online lending platforms that were recorded as of 2 November 2021. These circulars, having been issued by the Commission in the exercise of a delegated rule-making power, has the force and effect of law.[7]

Relative thereto, and lest it should be forgotten by Super-Space which owns and operates the online lending platform known as PESOKWENTO, the grant of a certificate of incorporation and certificate of authority to operate as a lending company is merely a privilege granted by the State to those who show, to the satisfaction of the Commission, that they are deserving of the same.[8] It thus behooves Super-Space not only to know the laws and regulations applicable to it, but also to fully and faithfully comply with the same.

Moreover, the Certificate of Authority to Operate as a Lending Company (CA) which the Commission granted to Super-Space is in the nature of a license which equally requires its continued compliance with all applicable laws, rules and regulations; and that the same may be revoked or rescinded on the basis of a finding of violation of such laws, rules and regulations, among others. The reason for the foregoing was explained in *Oposa vs Factoran*[9], where the Supreme Court emphasize that licenses are not contracts or property right protected by the due process clause of the Constitution, to wit:

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[7] "**Administrative agencies are clothed with rule-making powers because the lawmaking body finds it impracticable, if not impossible, to anticipate and provide for the multifarious and complex situations that may be encountered in enforcing the law**. All that is required is that the regulation should be germane to the objects and purposes of the law and that it should conform to the standards that the law prescribes.

The lawmaking body cannot possibly provide for all the details in the enforcement of a particular statute.

The grant of the rule-making power to administrative agencies is a relaxation of the principle of separation of powers and is an exception to the nondelegation of legislative powers. **Administrative regulations or "subordinate legislation" calculated to promote the public interest are necessary because of "the growing complexity of modern life, the multiplication of the subjects of governmental regulations, and the increased difficulty of administering the law.**" (*People vs Maceren*, G.R. No. L-32166, October 18, 1977)

[8] "Incorporation is a grant of privilege from the State, and the State is entitled to preserve the value of such privilege. Thus **in order to enjoy such privilege, the requirements and procedure for the grant thereof must be strictly complied with.** To this end, the State prescribes and gives notice, through statutes and regulations of the necessary requirements and procedures for the grant of the privilege. In this jurisdiction, the Corporation Code prescribes the requirements for the grant of a corporate franchise, and the certificate of registration may be acquired only if the conditions required by the statutes are complied with; therefor, any material statement in the Articles of Incorporation which is a falsehood may be considered fraudulent, regardless of the intent of the incorporators." (*Care Best International, Inc. vs Securities and Exchange Commission*

[9] G.R. No. 101083 July 30, 1993

> "Needless to say, all licenses may thus be revoked or rescinded by executive action. It is not a contract, property or a property right protected by the due process clause of the Constitution. In *Tan vs. Director of Forestry*, this Court held:
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> . . . A timber license is an instrument by which the State regulates the utilization and disposition of forest resources to the end that public welfare is promoted. A timber license is not a contract within the purview of the due process clause; it is only a license or privilege, which can be validly withdrawn whenever dictated by public interest or public welfare as in this case.
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> A license is merely a permit or privilege to do what otherwise would be unlawful, and is not a contract between the authority, federal, state, or municipal, granting it and the person to whom it is granted; neither is it property or a property right, nor does it create a vested right; nor is it taxation (37 C.J. 168). Thus, this Court held that the granting of license does not create irrevocable rights, neither is it property or property rights (People vs. Ong Tin, 54 O.G. 7576)."

The foregoing legal precepts and doctrinal pronouncements are among the important contexts which the Commission considers in performing its mandate to fully implement the provisions of the Lending Company Regulation Act of 2007, and the other laws, rules and regulations administered by it, to ensure that regulated entities fully comply with all statutory and/or regulatory requirements.

In the instant case, PESOKWENTO maintains that the CDO should not apply to it because it has shown that Super-Space, which actually owns and operates the online lending platform, is a registered corporation with a subsisting CA. PESOKWENTO also argues that Super-Space's submission of the Affidavit of Compliance further justifies the lifting of the CDO as it made the company compliant with applicable regulations.

The evidence on record which consists of the complaints filed against PESOKWENTO however justified the issuance of the Assailed CDO and denial of the Motion to Lift.

While it is true that Super-Space's Certificate of Incorporation and CA are essential in validly conducting and operating a lending business, the fact that these are licenses issued by the State requires Super-Space to fully comply with all the applicable rules and regulations issued by the Commission to justify its continued enjoyment of this privilege. In other words, the issuance of a CDO restraining the further conduct of a lending business, operated online or otherwise, should be sustained notwithstanding a subsisting Certificate of Incorporation and CA, if a corporation, in this case Super-Space, or any person for that matter, is shown to have violated any applicable law, rule or regulation.

In the instant case, the evidence on record which consists of the complaints filed against PESOKWENTO shows that PESOKWENTO has employed unfair and abusive debt collection practices which are expressly prohibited and penalized under MC 18, made misrepresentations, and imposed unreasonable terms and conditions upon its borrowers. The evidence presented by the EIPD show that PESOKWENTO harassed and threatened borrowers, and used offensive/foul language to exact payment of the loan amount. No contrary evidence was presented by PESOKWENTO in the Motion to Lift. There is thus no cogent reason to reconsider the finding and conclusion of this Commission that PESOKWENTO violated MC 18 which was the basis in issuing the Assailed CDO.

It should be emphasized that MC No. 18 was issued to effectively address the abusive, unethical and unfair collection practices of lending and/or financing companies, specifically those who purposely engage the services of third party service providers to avoid liability for client harassment.[10] The issuance and implementation of MC No. 18 was made pursuant to a valid exercise of the regulatory and supervisory power of the Commission over lending and financing companies, to carry out its mandate, among others, of placing their operations on a sound, competitive, stable and efficient basis, and in preventing acts or practices prejudicial to the public interest.[11]

MC No. 18 was not issued to prevent lending or financing companies from enforcing a contractual obligation against its borrowers for debts lawfully made. After all, it is established both in law and jurisprudence[12] that a loan obligation should be fully satisfied or paid, especially in the context of the State's full recognition of the critical role of lending and financing companies in providing medium and long-term credit for investments, and as an additional source of credit.[13] **MC No. 18**

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[10] See First and Second WHEREAS Clauses of the MC No. 18

[11] See Section 2 of Republic Act No. 8556, otherwise known as the "Financing Company Act of 1998" and Section 2 of Republic Act No. 9474, otherwise known as the "Lending Company Regulation Act of 2007"

[12] "Jurisprudence tells us that one who pleads payment has the burden of proving it; the burden rests on the defendant to prove payment, rather than on the plaintiff to prove non-payment. **Indeed, once the existence of an indebtedness is duly established by evidence, the burden of showing with legal certainty that the obligation has been discharged by payment rests on the debtor.**" (*Bognot vs RRI Lending Corporation.* G.R. No. 180144, September 24, 2014)

[13] Ibid

was essentially issued to ensure that the collection of loans by lending and/or financing companies is made within the bounds of law, and to protect or safeguard the privacy, dignity and wellbeing of borrowers. Thus, the violation of the provisions of MC 18, which is what PESOKWENTO did in the instant case, merits the imposition of appropriate sanctions, including the issuance of CDO, for the protection of public interest, among others.

Finally, the evidence on record also shows, as correctly pointed by the EIPD, that Super-Space violated MC 19 when it failed to disclose its corporate information and to post an advisory in its OLP informing prospective borrowers of the terms and conditions of the Disclosure Statement. This effectively misled the public into thinking that PESOKWENTO is an independent entity operating a lending business.

On the basis of the foregoing, the Commission does not find any cogent reason to lift the CDO insofar as PESOKWENTO is concerned.

WHEREFORE, premises considered, the Verified Motion to Lift Cease and Desist Order Dated 22 March 2022 filed by PESOKWENTO is hereby DENIED for lack of merit. The Cease and Desist Order dated 22 March 2022 issued against PESOKWENTO is hereby made **PERMANENT**.

Let a copy of this RESOLUTION be posted in the Commission's website and published in a national newspaper of general circulation and furnished to all operating departments and offices of the Commission for their information and appropriate action.

Further, the CGFD is hereby DIRECTED to investigate the unfair debt collection practice relative to the operation of PESOKWENTO's online application and if necessary, impose the appropriate penalties, as applicable.

SO ORDERED.

Makati City, Philippines; 19 July 2022.

EMILIO B. AQUINO
Chairperson

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
Commissioner

MCJILL BRYANT T. FERNANDEZ
Commissioner