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

IN THE MATTER OF THE PETITION FOR DECLARATION OF A STATE OF SUSPENSION OF PAYMENT; FOR THE APPROVAL OF A REHABILITATION PLAN; AND THE APPOINTMENT OF A MANAGEMENT COMMITTEE,

VICTORIAS MILLING COMPANY, INC.,
Appellant,

SEC En Banc Case No. 03-14-322
SEC En Banc Case No. 02-14-317

-versus-

THE SEC SPECIAL HEARING PANEL 1, CHINA BANKING CORPORATION,
DEVELOPMENT BANK OF THE PHILIPPINES, LAND BANK OF THE PHILIPPINES, PENTACAPITAL INVESTMENT CORPORATION, PHILIPPINE NATIONAL BANK, GOVERNMENT SERVICE INSUANCE SYSTEM, ROLANDO C. RODRIGUEZ, DEUTSCHE BANK, AG, BANK OF THE PHILIPPINE ISLANDS, BDO UNIBANK, INC. *(formerly Dao Heng Bank)*, **UNITED COCONUT PLANTERS BANK, ADVENT CAPITAL AND FINANCE CORPORATION** *(formerly All Asia Capital and Trust Corporation)*, **ASIA BANK CORPORATION, NEGROS MERCHANTS ENTERPRISES, INC. AND EDELL COMMERCIAL, EXPORT INDUSTRY BANK** *(formerly URBAN BANK)*, **MANUFACTURER'S LIFE**

INSURANCE CO. (PHILS.), INC./ NATIONAL FOOD AUTHORITY, AUSTRALIA AND NEW ZEALAND BANKING CORPORATION, LTD. AND BANQUE NATIONAL DE PARIS, SECURITY BANK, UNITED COCONUT PLANTERS LIFE ASSURANCE CORPORATION, AITOR DE CORTABITARTE, SANTIAGO CORPUZ & EJERCITY LAW OFFICE, SOCIAL SECURITY SYSTEM, AND CITIBANK, METROPOLITAN BANK AND TRUST COMPANY,

Appellees.

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DECISION

Before the Commission are two (2) petitions filed by Victorias Milling Company, Inc. (Appellant VMC), namely: (1) a *Petition for Review on Certiorari (SEC En Banc Case No. 03-14-322)* filed on March 24, 2014, praying for the recall/reversal and setting aside of the Order dated 3 March 2014 of the Commission's Special Hearing Panel 1 ("SHP1"), which granted its motion to amend the composition of its Board of Directors, and (2) a *Petition for Review on Certiorari (SEC En Banc Case No. 02-14-317)* filed on February 7, 2014 praying for the recall/reversal and the setting aside the SHP1 Order[1], denying the grant of all eleven (11) Board of Directors seats to Appellant's stockholders.

FACTS

On 04 July 1997, Appellant VMC filed with the Commission a Petition for the Declaration of Suspension of Payment, for the Approval of Rehabilitation Plan and the Appointment of Management Committee.[2]

[1] January 27, 2014.
[2] Docketed as SEC Case No. 07-97-5693.

In its Orders dated August 17 and 19, 1999, the Commission approved the Original Rehabilitation Plan[3] of Appellant VMC.

On 11 May 2012, Appellant VMC filed a Manifestation and Motion with the attached Alternative Rehabilitation Plan, Part IV (4) of which provides:

> "Upon implementation of the new plan the new VMC board will be composed of the following"

"Existing VMC Shareholders	3 seats"
"Secured Creditors	1 seat"
"Creditors with Debt Conversion	6 seats"
"Joint Venture Partner	1 seat"

The afore-quoted provision of the Approved Rehabilitation Plan was embodied in Section 21 of the Debt Restructuring Agreement dated 29 April 2002 (DRA) which was executed by and and among Appellant VMC and its creditors.

Pursuant to the Approved Rehabilitation Plan, Tanduay Holdings Inc., in its capacity as the JV Partner, occupied one (1) board seat as a consequence of the loan that it extended to Appellant VMC. However, after the loan was fully paid on 8 April 2008, the board seat intended for the JV Partner became *functus officio*.

On November 12, 2012, Appellant VMC filed a Manifestation and Motion ("1st Motion") praying that the Commission approves the amendment on the composition of its Board of Directors under Part IV (4) of the Approved Rehabilitation Plan (ARP) and Section 21 of the Debt Restructuring Agreement (DRA) by allocating the one (1) board seat previously given to the Joint Venture Partner i.e. the nominee of Tanduay Holdings, Inc., to Creditors with Debt Conversion, thereby increasing the board seats of the latter to seven (7) to wit:

Particulars	Number of Seats	
	FROM	TO
a. Existing VMC Shareholder	3	3
b. Secured Creditors	1	1
c. Creditors with Debt Conversion	6	7
d. Joint Venture Partners	1	0

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[3] Rehabilitation Plan as of September 25, 1998 as subjected to the First Addendum dated 5 February 1999 and Second Amendment dated July 1999.

While the 1st Motion was pending resolution, Appellant VMC filed another Manifestation and Motion[4] ("2nd motion") informing the Commission that it has already caused the full payment of its restructured loan under the Approved Rehabilitation Plan. The foregoing had the effect of rendering the board seats reserved for the Secured Creditors and Creditors with Debt Conversion *functus officio*, for which reason, Appellant VMC prayed that it be allowed by the SPH1 to further amend Part IV (4) of the Approved Rehabilitation Plan (ARP) and Section 21 of the DRA to enable it to elect its Board of Directors pursuant to and in accordance with its Amended By-Laws where Appellant VMC's stockholders shall enjoy back ***all*** of its eleven (11) Board of Directors seats, to wit:

Particulars	Number of Seats	
	FROM	TO
a. Existing VMC Shareholder	3	11
b. Secured Creditors	1	0
c. Creditors with Debt Conversion	6	0
d. Joint Venture Partners	1	0

In an Order dated January 27, 2014 (the "January 2014 Order"), the SHP1 acted on the 2nd Motion ahead of the 1st Motion by denying the same on the basis of a finding that the loans to creditors still remain outstanding in the form of Convertible Notes (CN) and thus, the board seats for Secured Creditors and Creditors with Debt Conversion must continue to be reserved to them. Appellant VMC filed a Petition for Review on Certiorari assailing the SPH1's January 2014 Order. The said Petition is the subject of SEC *En Banc* Case No. 02-14-317.

On March 3, 2014, SPH1 issued and Order (the "March 2014 Order") granting the 1st Motion. Notwithstanding SHP1's approval of Appellant's 1st Motion, Appellant VMC nonetheless filed another Petition for Review on Certiorari (docketed as SEC *En Banc* Case No. 03-14-322), praying for (a) the recall/reversal and setting aside of the January 2014 Order on the alleged ground that the same ceased to have basis with the supervening events (alleged full payment of loans) that occurred after the filing of the 1st Motion, and (b) the consolidation of the SEC *En Banc* Case No. 03-14-322 with SEC *En Banc* Case No. 02-14-317.

[4] July 18, 2013.

In sum, Appellant VMC prays in both SEC *En Banc* Cases to be authorized to amend Part IV (4) of the Approved Rehabilitation Plan (ARP) and Section 21 of the DRA to enable it to elect ALL of its Board of Directors pursuant to its Amended By-Laws.

On December 1, 2014, Appellant filed a Notice of Withdrawal of Petition for Review on Certiorari ("Notice")[5] with attached Secretary's Certificate attesting to the approval by its Board of Directors of the withdrawal of the Petitions for Review on Certiorari dated 06 February 2014 and 21 March 2014 for both SEC *En Banc* Case Nos. 02-14-317 and 03-14-322, respectively.

ISSUE

Whether or not Appellant VMC's Notice is a sufficient ground for the Commission to consider both SEC *En Banc* Case Nos. 03-14-322 and 02-14-317 WITHDRAWN.

RULING

On the propriety of consolidating two (2) Petitions under SEC *En Banc* Cases No. 03-14-322 and No. 02-14-317, the Commission finds the same to be sanctioned by existing jurisprudence and hereby resolves to grant the same. The foregoing finds support in *Romeo Teston vs. DBP, et.al.*[6], where the Supreme Court (the "Court") ruled, to wit:

> *"Consolidation of actions is expressly authorized under Section 1, Rule 31 of the 1997 Rules of Civil Procedure, which states:*
>
> *Section 1. Consolidation. – <u>When actions involving a common question of law or fact or pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated;</u> and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.*
>
> *A court may order several actions pending before it to be tried together where they arise from the same act, event or transaction, involve the same or like issues, and depend largely or substantially on the same evidence, provided that the court has jurisdiction over the cases to be consolidated and that a joint trial will not give one party an undue advantage or prejudice the substantial rights of any of the parties. The obvious purpose of the rule allowing consolidation is to avoid multiplicity of suits to guard against*

[5] March 24, 2014.
[6] G.R. No. 144374, November 11, 2005.

> *oppression or abuse, to prevent delays, to clear congested dockets, to simplify the work of the trial court; in short the attainment of justice with the least expense and vexation to the parties litigants. Consolidation of actions is addressed to the sound discretion of the court and its action in consolidating will not be disturbed in the absence of manifest abuse of discretion."* (Underscoring supplied)

Applying the afore-quoted doctrine in the present case, it is clear that consolidation is warranted since both Petitions were filed by the same Appellant with the SHP1, and both prayed for a similar relief which allegedly resulted from circumstances relating to Appellant VMC's rehabilitation, and which justifies the amendment of the provisions of the ARP and the DRA allowing Appellant VMC's stockholders to vote for all the 11 Board seats pursuant to its By-Laws. Both cases thus cover issues that relates to the same rehabilitation proceedings, and the resolution of one issue is intimately related to, and might lead to the resolution of the other.

Coming now to the main issue of this consolidated case, the Commission hereby resolves to consider both SEC *En Banc* cases as WITHDRAWN on the basis of the Notice filed with it by Appellant VMC. Consequently, the issues presented here have become moot and academic.

The 2006 Rules of Procedure of the Commission (2006 Rules), the rule applicable at time the Notice was filed, is silent on whether parties to a case are allowed to withdraw a petition filed with the Commission. It is however worth noting that the 2016 Rules of Procedure of the Commission[7] (2016 Rules) has explicitly provided under Section 6, Rule I that "*the pertinent provisions of the Rules of Court may, in the interest of expeditious dispensation of justice and whenever practicable, be applied by analogy or in a suppletory character and effect.*"

Section 3, Rule 50 of the Rules of Court which apply suppletorily[8] can be applied considering that no pleading (in the nature of an appellee's brief) was filed by any of the Appellees after the Notice was filed, thus:

> Sec. 3. Withdrawal of Appeal. An appeal may be withdrawn as of right at any time before the filing of the appellee's brief. Thereafter, the withdrawal may be allowed in the discretion of the Court. (Emphasis supplied)

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[7] Became effective on December 7, 2016.

[8] Section 3 of Rule 50 - Dismissal of Appeal, where an appeal may be withdrawn as a matter of right at any time before the filing of appellee's brief. Thereafter, the withdrawal may be allowed at the discretion of the court.

The consequence of the withdrawal was explained by the Court in the case of *Southwestern University vs. Hon. Celedonio Salvado et. al.*[9], to wit:

> *"Such finding of the lower courts can no longer be disturbed at this stage because the petitioner's act of withdrawing his appeal is tantamount to his acquiescence and acceptance of the decision, as petitioner himself said in his motion to dismiss that "he is no longer interested in pursuing the appeal ... having been convinced of the fairness and reasonableness of the judgment of the lower court. Where an appellant withdraws his appeal, he must face the consequence of his withdrawal, such as the decision of the court a quo becoming final and executory.*
>
> *x x x*
>
> *This Court has consistently enunciated the uniform ruling that in cases of withdrawn or dismissed appeal, the judgment shall be revived and shall be remanded to the municipal court for execution. It is only after the remand of the judgment that execution will lie.* (Underscoring supplied)

On account of the foregoing, the Notice had the effect of revising the Orders of the SHPI and rendering the instant Petitions moot and academic.

In the case of *The Province of North Cotabato vs. The Government of the Republic of the Philippines Peace Panel on Ancestral Domain*[10], the Supreme Court explained when a case is moot or academic, thus:

> *"For a court to exercise its power of adjudication, there must be an actual case or controversy — one which involves a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution; the case must not be moot or academic or based on extra-legal or other similar considerations not cognizable by a court of justice. A case becomes moot and academic when its purpose has become stale. An action is considered "moot" when it no longer presents a justiciable controversy because the issues involved have become academic or dead or when the matter in dispute has already been resolved and hence, one is not entitled to judicial intervention unless the issue is likely to be raised again between the parties. Simply stated, there is nothing for the court to resolve as the determination thereof has been overtaken by subsequent events."*
> (Underscoring supplied)

[9] G.R. L-45013, May 28, 1979.
[10] The Province of North Cotabato v. The Government of the Republic of the Philippines Peace Panel on Ancestral Domain, G.R. Nos. 183591, 183752, 183893 & 183951, October 14, 2008.

In the instant case, the Commission has nothing to resolve as the issues that were presented in the two (2) Petitions filed by Appellant VMC have ceased to become such after Appellant VMC filed the Notice. Under existing jurisprudence, Appellant VMC's act of withdrawing its Petitions was tantamount to its acquiescence and acceptance of the SHP1's Orders. Consequently, the Orders of the SHP1 in the instant consolidated *En Banc* cases stand.

WHEREFORE, acting on the Notice filed by Appellant VMC and finding that the same is not contrary to law, the *Petitions* are considered WITHDRAWN. The Orders dated January 27, 2014 and March 3, 2014 of the SPH1 stay. The instant cases are hereby DISMISSED for being moot and academic.

SO ORDERED.

Pasay City, Philippines, 07 August 2020.

EMILIO B. AQUINO
Chairperson

EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
Commissioner