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

VICTORIAS MILLING COMPANY, INC.,
Appellant,

- *versus* -

THE SPECIAL HEARING PANEL 1 and DAO HENG BANK, INC.
Appellees.

SEC *En Banc* Case No. 01-15-353

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DECISION

This resolves the pending *Appeal*[1] filed, on 23 January 2015, by Victorias Milling Company, Inc. (**VMC**) seeking to reverse and set aside the *Order* dated 06 January 2015 (**Assailed Order**) of the Special Hearing Panel 1 (**SHP1**), the dispositive portion is read as follows:

> "WHEREFORE, premises considered, Victorias Milling Company is **directed to release the remaining 105,000 bags of refined sugar covered by RSDO Nos. 38474 to 384482 and RSDO Nos. 38487 to 38492 to intervenor Dao Heng Bank** or its duly authorized representative. In case the release of 105,000 bags of refined sugar is no longer available, **Victorias Milling Company will pay for the monetary equivalent of their value, in the total amount of Sixty-Three Million Five Hundred Seventy-Four Thousand Three Hundred Fifty Pesos (P63,574,350.00)**, to Dao Heng Bank or its duly authorized representative with payment of legal interest from receipt of the demand letter on 21 May 1997. VMC is also directed to pay the tolling fees and charges in the amount of Four Million Six Hundred Ninety Eight Thousand Eight Hundred Twenty Four and 25/100 Pesos (P4,698,824.25) intended for the hauling of the bags of refined sugar covered by RSDO Nos. 38487 and 38488."

The Facts and Proceedings

On 04 July 1997, VMC filed before the Commission, through the Securities Investigation and Clearing Department (**SICD**) a *Petition for Declaration of*

[1] Notice of Appeal and Memorandum of Appeal dated 01 April 2016, Records, pages 305-331.

Suspension of Payments; for the Approval of a Rehabilitation Plan; and the Appointment of a Management Committee in *SEC Case No. 07-97-5693*. The SICD gave due course to the Petition. Thereafter, the SICD issued an *Order* dated 08 July 1997 suspending all actions or claims against VMC pending before any court, tribunal, office, board and/or Commission.

Prior to filing of VMC's petition, Dao Heng Bank, Inc., now BDO Unibank, Inc. (**DHB**), filed, on 03 July 1997, a *Complaint for Recovery of Personal Property and/or Payment of a Sum of Money and Damages with prayer for Replevin*[2] against VMC before the Regional Trial Court (**RTC**), Branch 60 of Makati City which was docketed as Civil Case No. 97-1520. DHB prays for the issuance of a *Writ of Replevin* for the seizure of 105,000 bags of refined sugar, covered by Refined Sugar Delivery Order (**RSDO**) Nos. 384474-38482 and, after the trial on the merits, for VMC to be ordered to pay the amount of Php 63,568,050.00, including tolling fees and charges of Php 4,698,824.25.

The RTC, upon VMC's motion[3], suspended the proceedings therein and archived the same on the ground that there is a pending Petition for Suspension of Payments filed by VMC with the Commission in SEC Case No. 07-97-5693[4].

Thereafter, DHB filed a *Motion for Leave to Intervene*[5] with the SICD Hearing Panel praying that it be granted to intervene in VMC's rehabilitation proceedings as a creditor. In an *Omnibus Order*[6], the SICD's Hearing Panel denied DHB's motion[7]. DHB appealed the said order to the Commission *En Banc*. In its *Decision*[8], the Commission *En Banc* granted DHB's appeal modifying SICD Hearing Panel's *Omnibus Order* and allowing DHB's *Motion for Leave to Intervene*[9]. Consequently, DHB filed its *Complaint-in-Intervention* in compliance to the Commission *En Banc's* directive.

In DHB's *Complaint-in-Intervention*[10], it alleges that sometime in November 1996, it granted North Negros Marketing Company, Inc. (**NNMCI**), a subsidiary of VMC, credit facilities, including a credit line. The said grant was secured by 150,000 bags of refined sugar covered RSDO No. 37977[11] dated 02

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[2] Dated 03 July 1997, Records, pages 226-293..

[3] Motion to Suspend Proceedings dated 09 July 1999, alleging that it has filed with the SEC the petition for the immediate issuance of an Order suspending all actions against it until final orders from the Commssion.

[4] Annex "D" of the Appeal, RTC Branch 60, Makati City Second Order dated 08 August 1997, Records, pages 216-219 – WHEREFORE, the Court hereby orders: 10.1 The MOTION TO SUSPEND PROCEEDINGS dated July 9, 1997 (pp. 124-126, id.) GRANTED; 10.2 Accordingly, the proceedings suspended; 10.3. The case ARCHIVIED.

[5] Dated 17 September 1997, Records, pages 211-215, attached as Annex "O" is the Complaint-in-Intervention dated 15 September 1997.

[6] Dated 03 November 1997, Records, pages 157-159, declaring that the jurisdiction in establishing claims such as that of DHB is not with the Commission but with regular courts.

[7] Ibid. - Premises considered, the Motion for Leave to Intervene by Dao Heng Bank, Inc. is hereby DENIED, and the Motion for Reconsideration of UB and UII is hereby GRANTED. Accordingly, the Order dated September 23, 1997 is hereby set aside.

[8] Dated 10 March 1998, Annex "G" of the Memorandum of Appeal, Records, pages 149-152.

[9] Ibid. – In view of the foregoing, the instant appeal is hereby GRANTED. The Omnibus Order of the Hearing Panel dated 03 November 1997 is thus MODIFIED, allowing the Motion for Leave to Intervene filed by Intervenor-Appellant DHB before SICD.

[10] DHB's Complaint-in-Intervention dated 17 August 1998, Annex "H" of VMC's Memorandum of Appeal, Records, pages 130-146.

[11] Annex "A" of DHB's Complaint-in-Intervention, Records, page 129.

December 1996 issued by VMC. To further secure NNMCI's loan application, VMC issued a *Certification*[12] dated 03 December 1996 stating that it certifies the RSDO No. 37977 issued in favor of NNMCI and that 150,000 bags of refined sugar shall be available upon demand and surrender of the refined sugar invoice/delivery order.

NNMCI, on 09 December 1996, entered into a General Loan Agreement[13] with DHB. Then, NNMCI, on 10 December 1996, borrowed Php 50,000,000.00 from DHB as evidenced by a *Promissory Note with Deed of Assignment of Assets No. 502-00611TW dated 10 December 1996*[14]. On 16 December 1996, NNMCI borrowed again from DHB another Php 50,000,000.00 as evidenced by *Promissory Note with Deed of Assignment of Assets No. 502-00633TW dated 16 December 1996*[15]. Under the terms of the Promissory Notes, said loans were secured by assignment of RSDO No. 37977 issued by VMC in favor of DHB. Subsequently, NNMCI defaulted in the payment of interest on the due date. Thus, the remaining obligation became immediately due and demandable.[16]

On 18 March 1997, NNMCI, with DHB's conformity, sold to Pepsi Cola Products Philippines, Inc. (**PEPSI**) the 150,000 bags of refined sugar covered by RSDO No. 37977, as evidenced by PEPSI's Purchase Orders Nos. 59123[17] and 59125[18]. DHB, with NNMCI's consent, delivered RSDO No. 37977 to PEPSI with the express agreement that the proceeds of the sale will be delivered to the former to partially pay for the loans obtained by NNMCI.

Thereafter, PEPSI surrendered RSDO No. 37977 to VMC which cancelled the same for the reason that the latter could not deliver the entire lot at once. As a replacement, it issued twenty (20) RSDOs in the name of PEPSI, to wit: i.) RSDO Nos. 38473 to 38482[19] (5,000 bags each); and ii.) RSDO Nos. 38483 to 38492[20] (10,000 bags each).

Then, PEPSI surrendered RSDO Nos. 38473, 38483-38486, 38487 and 38488 (65,000 bags of refined sugar) to VMC and paid in advance the corresponding tolling fees amounting to Php 10,123,845.76 for hauling the refined sugar. However, VMC only released 45,000 bags of refined sugar valued at Php 27,243,450.00 covered by RSDO Nos. 38473 and 38483-38486.

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12 Annex "B" of DHB's Complaint-in-Intervention, Records, pages 128.
13 Annex "C" of the Complaint-in-Intervention, Records, pages 124-127.
14 Annex "D" of the Complaint-in-Intervention, Records, page 123.
15 Annex "E" of the Complaint-in-Intervention, Records, page 122.
16 Note 13 and 14, Supra – Upon the happening as to the Borrower or indorsees of any of the following events (hereinafter referred to as 'events of default'), the whole sum remaining unpaid under this Note shall thereupon become immediately due and payable without demand or notice; (1) failure to pay any instalment or interest on the due date thereof; xxx.
17 Annex "F" of the Complaint-in-Intervention. Records page 121.
18 Annex "G" of the Complaint-in-Intervention. Records page 120.
19 Annexes "H" to "H-9" of the Complaint-in-Intervention, Records pages 110-119.
20 Annexes "H-10" to "H-18" of the Complaint-in-Intervention, Records pages 101-109.

Because of this, DHB, through a letter[21], demanded from VMC for the release of the remaining 105,000 bags of refined sugar covered by RSDO Nos. 38474 to 38482 and 38487 to 38492. Despite demand, VMC still failed to comply. Thus, on 25 June 1997, PEPSI executed a Deed of Assignment[22] wherein it assigned, conveyed and transferred in favor of DHB all of its rights and interests over the remaining 105,000 bags of refined sugar covered by the subject RSDOs. It was further stipulated that DHB, upon recovery, may sell to PEPSI the remaining 105,000 bags of refined sugar and the proceeds of the same will be considered as partial payment of NNMCI's loan.

On the other hand, VMC filed its *Answer (To Dao Heng Bank's Complaint-in-Intervention)*[23] praying for the dismissal of DHB's *Complaint-in-Intervention* on the ground that: 1.) the complaint states no cause of action because there is no privity of contract between DHB and VMC; 2.) VMC is not obligated to deliver the subject goods because no warehouse receipt was presented or surrender; and 3.) the Commission has no jurisdiction over the claim because of non-payment of the correct docket fees.

Subsequently, the parties were allowed to submit their evidence[24] in support to their respective claims. Then, SHP1 issued the Assailed Order where it ruled that:

> "In this case, a quasi-contract was the source of the obligation of VMC to deliver 150,000 bags of refined sugar to Pepsi. The undertaking to make the subject bags of refined sugar available upon demand and upon surrender of the RSDOs in issue, as embodied in the Certification issued by VMC for the purpose of loan availment with the Intervenor, partake of the nature of an obligation. By their acts, **an implied contract between VMC and DHB was created when DHB required for the issuance of a certification** and VMC complied by issuing the subject certification to its subsidiary, NNMCI, for the loan availment of the latter.
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> The **Certification was an essential requirement that led the bank to grant the application and release the funds to NNMCI.** In fact, without it, the bank would not have granted the loan applied for by NNMCI. Ms. Ma. Lourdes Molina, Vice President of Commercial Lending Market of Intervenor DHB, testified in part, as follows:
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> x x x
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> Based on Ms. Molina's testimony, **Dao Heng Bank actually relied upon the Certification when it granted the loan availment of VMC.** Considering that it was VMC that issued the certification requested by the bank, an obligation based on an implied contract,

[21] Letter dated 20 May 1997, Annex "I" of the Complaint-in-Intervention, Records, pages 99-100.
[22] Annex "J" of the Complaint-in-Intervention, Records pages 96-98.
[23] Dated 28 September 1998, Records, pages 71-81.
[24] [24] DHB, in its Formal Offer of Evidence dated 02 July 1999, offered Exhibits "A" to "Z", while VMC, in its Formal Offer of Evidence dated 27 July 1999, offered Exhibits "1" to "2".

arose on the part of VMC when it issued a Certification in exchange for the grant of the loan by Intervenor Dao Heng Bank and undertook to deliver the bags of refined sugar covered RSDO No. 37977 upon surrender of the said delivery order.

Furthermore, SHP1 ruled that:

"Should the turnover of the bags of refined sugar be no longer possible intervenor DHB prayed for the payment of their monetary equivalent. Thus, it necessary to determine the value of the monetary equivalent of the bags of refined sugar. Based on Purchase Orders No. 59123 and 59125, each bag of refined sugar is priced at P605.47. Therefore , the monetary value of the bags of refined sugar can easily be computed using this formula:

(Number of bags of refined sugar) x (Price of each bag of refined sugar)

Hence, **the monetary value of the remaining 105,000 bags of refined sugar is P63,574,350.00**

Aside from the foregoing obligation, VMC is also obliged to pay the tolling fees for the hauling of the bags of refined sugar to Dao Heng Bank, as assignee of Pepsi Products, Inc. VMC itself admitted having received the amount of P10,123,845.76 for the fees mentioned. Despite its receipt of the advanced tolling fees, VMC never released the sugar covered by RSDO Nos. 38474 to 38482 and RSDO Nos. 38487 to 38492. Intervenor Dao Heng Bank prayed for the recovery of the tolling fees it advanced for the hauling of the bags of refined sugar covered RSDO Nos. 38487 and 38488"

Aggrieved, VMC now comes before this Commission arguing that SHP1 acted without or in excess of its jurisdiction or with grave abuse of discretion when it issued the Assailed Order. Corollary to this, VMC assails SHP1's ruling that the former is obliged to deliver 105,000 bags of refined sugar or pay its value plus tolling fees, charges and interests on the following grounds:

i. that SHP1 has no jurisdiction to adjudicate and award the alleged claims in DHB's Complaint-in-Intervention;
ii. that a *quasi-contract* could not have been created between VMC and DHB since VMC was not unjustly enriched at DHB's expense;
iii. that SHP1 erroneously considered the Affidavit of Ma. Lourdes I. Molina in computing the monetary value of the alleged remaining bags of refined sugar; and
iv. that SHP1 erroneously considered the Answer to Request for Admission dated 26 April 1999 submitted by Atty. Pacifico Agabin despite the fact that the preparation and submission of the said pleading was not authorized by VMC or its Board of Directors or the VMC Mancom.

In its *Reply Memorandum*[25], DHB argues that:

i. SHP1 has jurisdiction under the law to adjudicate the claim of DHB against VMC;
ii. SHP1 did not err in ruling that VMC is liable to DHB for the value of the remaining bags of refined sugar;
iii. that SHP1 did not err in ruling that VMC is liable to DHB on the basis of the principle of *quasi-contracts*;
iv. SHP1 did not err in considering the Affidavit of Ma. Lourdes Molina in computing the monetary value of the 105,000 bags of refined sugar;
v. SHP1 did not err in considering the Answer to the Request for Admission submitted by VMC's own counsel of record;
vi. SHP1 did not err in considering as valid the RSDOs and Certification issued by VMC;
vii. SHP1 did not err in ruling that VMC's claim that it was unable to honor the RSDOs on account of the directive of the Sugar Regulatory Authority (SRA); and
viii. SHP1 did not err in ruling that VMC is liable to DHB on the basis of the RSDOs it issued.

Issues

The issues to be resolved are: 1.) whether or not the Commission has jurisdiction over DHB's *Complaint-in-Intervention*; 2.) whether or not VMC is liable to DHB for RSDO Nos. 38474 to 38482 and 38487 to 38492 involving 105,000 bags of refined sugar.

Ruling

We find the instant petition bereft of merit.

The Commission's jurisdiction over DHB's *Complainant-in-Intervention*

In support of its argument that SHP1 has no jurisdiction to adjudicate and award DHB's claims as alleged in the latter's *Complaint-in-Intervention,* VMC cited several cases[26] declaring that jurisdiction is conferred by law. Further, VMC contends that rehabilitation proceedings are summary and non-adversarial in nature. In other words, these proceedings are not intended to adjudicate opposing claims. Thus, the Assailed Order is void because SHP1 acted without or in excess of its jurisdiction or with abuse of discretion in issuing the same.

On the other hand, DHB maintains that SHP1 has jurisdiction over its complaint as provided in P.D. No. 902-A, as amended by P.D. No. 1758. It contends that VMC is simply asserting that the Commission should not take

[25] Dated 16 February 2015, Records, pages 336-369.

[26] Advent Capital vs. Alcantara, et al., G.R. No. 183050, 25 January 2012 and Express Investment III Private Ltd. et al. vs. Bayan Telecommunications, Inc. et al. G.R. No. 174457-59.

jurisdiction because there is a pending civil case before RTC, Branch 60 of Makati City. Similarly, DHB raises the fact that it was VMC who moved for the suspension of said civil case then pending with the RTC on the ground that the Commission has exclusive jurisdiction over its claim. Furthermore, DHB argues that VMC already submitted to the Commission's jurisdiction when it filed its answer to DHB's *Complaint-in-Intervention*, seeking affirmative reliefs from the Commission.

It is axiomatic that the jurisdiction of a tribunal, including a quasi-judicial officer or government agency, over the nature and subject matter of a petition or complaint is determined by the material allegations therein and the character of the relief prayed for, irrespective of whether the petitioner or complainant is entitled to any or all such reliefs.[27]

In this case, the Commission's exclusive and original jurisdiction over petitions for suspension of payments or rehabilitation of corporations, as well as incidents thereof, is clearly provided in Sections 5 (d)[28] and 6 (c)[29] (d)[30] of P.D. no. 902-A, as amended by P.D. No. 1758.

In this connection, the Supreme Court has ruled in the following cases what constitute suspension of claims falling under the exclusive and original

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27 Herrera v. Bernardo, G.R. No. 17025, June 1, 2011, citing Heirs of Julian Dela Cruz and Leonora Talaro v. Heirs of Alberto Cruz, G.R. No. 162890, November 22, 2005, 475 SCRA 743, 755-756.

28 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: x x x d) Petitions of corporations, partnerships or associations to be declared in the state of suspension of payments in cases where the corporation, partnership or association possesses sufficient property to cover all its debts but foresees the impossibility of meeting them when they respectively fall due or in cases where the corporation, partnership or association has no sufficient assets to cover its liabilities, but is under the management of a Rehabilitation Receiver or Management Committee created pursuant to this Decree.

29 Section 6. In order to effectively exercise such jurisdiction, the Commission shall possess the following powers: x x x c) To appoint one or more receivers of the property, real or personal, which is the subject of the action pending before the Commission in accordance with the pertinent provisions of the Rules of Court in such other cases whenever necessary in order to preserve the rights of the parties-litigants and/or protect the interest of the investing public and creditors. Provided, however, That the Commission may, in appropriate cases, appoint a Rehabilitation Receiver who shall have, in addition to the powers of a regular receiver under the provisions of the Rules of Court, such functions and powers as are provided for in the succeeding paragraph d) hereof. Provided, further, that upon appointment of a management committee, rehabilitation receiver, board or body, pursuant to this Decree, all actions for claims against corporations, partnerships or associations under management or receivership pending before any court, tribunal, board or body shall be suspended accordingly."

30 d) To create and appoint a management committee, board, or body upon petition or *motu propio* to undertake the management of corporations, partnerships or other associations in appropriate cases when there is imminent danger of dissipation, loss, wastage or destruction of assets or other properties or paralyzation of business operations of such corporations or entities which may be prejudicial to the interest of minority stockholders, parties-litigants or the general public. The management committee or rehabilitation receiver, board or body shall have the power to take custody of and control over, all the existing assets and property of such entities under management; to evaluate the existing assets and liabilities, earnings and operations of such corporations, partnerships or other associations; to determine the best way to salvage and protect the interest of the investors and creditors; to study, review and evaluate the feasibility of continuing operations and restructure and rehabilitate such entities if determined to be feasible by the Commission. It shall report and be responsible to the Commission until dissolved by order of the Commission. Provided, however, That the Commission, may, on the basis of the findings and recommendation of the management committee, or rehabilitation receiver, board or body, or on its own findings, determine that the continuance in business of such corporation or entity would not be feasible or profitable nor work to the best interest of the stockholders, parties-litigants, creditors, or the general public, order the dissolution of such corporation entity and its remaining assets liquidated accordingly. The management committee or rehabilitation receiver, board or body may overrule or revoke the actions of the previous management and board of directors of the entity or entities under management notwithstanding any provision of law, articles of incorporation or by-laws to the contrary.
The management committee, or rehabilitation receiver, board or body shall not be subject to any action, claim or demand for, or in connection with, any act done or omitted to be done by it in good faith in the exercise of its functions, or in connection with the exercise of its power herein conferred."

jurisdiction of the Commission pursuant to Sections 5 and 6 (c) of P.D. No. 902-A, to wit:

1. In the case of *Alemar's Sibal & Sons, Inc. vs. Elbinias*[31], which raises the issue of whether or not the respondent court can validly proceed with the execution of a final decision for the payment of a sum of money despite the fact that the judgment debtor has been placed under receivership, the Supreme ruled that:

   "During rehabilitation receivership, the **assets are held in trust for the equal benefit of all creditors** to preclude one from obtaining an advantage or preference over another by the expediency of an attachment, execution or otherwise. For what would prevent an alert creditor, upon learning of the receivership, from rushing posthaste to the courts to secure judgments for the satisfaction of its claims to the prejudice of the less alert creditors.

   As between creditors, the key phrase is "**equality is equity**." When a corporation threatened by bankruptcy is taken over by a receiver, all the creditors should stand on an equal footing. Not anyone of them should be given any preference by paying one or some of them ahead of the others. **This is precisely the reason for the suspension of all pending claims against the corporation under receivership. Instead of creditors vexing the courts with suits against the distressed firm, <u>they are directed to file their claims with the receiver</u> who is a duly appointed officer of the SEC.**"

2. In *PAL vs. Zamora*[32], where the respondent therein filed a complaint for illegal dismissal against PAL before the National Labor Relations Commission (NLRC), the Court ruled:

   "The raison d'être behind the suspension of claims pending rehabilitation proceedings was explained in this wise:

   In light of these powers, the reason for suspending actions for claims against the corporation should not be difficult to discover. It is not really to enable the management committee or the rehabilitation receiver to substitute the defendant in any pending action against it before any court, tribunal, board or body. <u>Obviously, the real justification is to enable the management committee or rehabilitation receiver to effectively exercise its/his powers free from any judicial or extra-judicial interference that might unduly hinder or prevent the "rescue" of the debtor company.</u> To allow such other action to continue would only add to the burden of the management committee or rehabilitation receiver, whose time, effort and resources would be wasted in defending claims against the corporation instead of being directed toward its restructuring and rehabilitation.

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[31] G.R. No. 75414 June 4, 1990.

[32] G.R. No. 166996, 02 February 2007.

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It is plain from the foregoing provisions of law that "upon the appointment [by the SEC] of a management committee or a rehabilitation receiver," all actions for claims against the corporation pending before any court, tribunal or board shall ipso jure be suspended. x x x. (Emphasis supplied.)"

3. In *RCBC vs. IAC*[33], the petitioner contends that P.D. No. 902-A is not yet applicable, hence it may still be allowed to assert its preferred status because it foreclosed on the mortgage prior to the appointment of the management committee. It was ruled that:

> 1. All claims against corporations, partnerships, or associations that are pending before any court, tribunal, or board, without distinction as to whether or not a creditor is secured or unsecured, shall be suspended effective upon the appointment of a management committee, rehabilitation receiver, board, or body in accordance which the provisions of Presidential Decree No. 902-A.
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> 2. Secured creditors retain their preference over unsecured creditors, but enforcement of such preference is equally suspended upon the appointment of a management committee, rehabilitation receiver, board, or body. In the event that the assets of the corporation, partnership, or association are finally liquidated, however, secured and preferred credits under the applicable provisions of the Civil Code will definitely have preference over unsecured ones.

4. In *Bank of Philippine Islands vs. Sarabia Manor Hotel Corporation*[34], the Supreme ruled that:

> "Verily, the purpose of rehabilitation proceedings is to enable the company to gain a new lease on life **and thereby allow creditors to be paid their claims from its earnings**. Thus, rehabilitation shall be undertaken when it is shown that the continued operation of the corporation is economically more feasible and its creditors can recover, by way of the present value of payments projected in the plan, more, if the corporation continues as a going concern than if it is immediately liquidated."

In view of the foregoing jurisprudence, it is clear that the stay order of rehabilitation proceedings seek to prevent the creditors from pursuing separate and disparate remedies in various fora to enforce their claim. The principle of "equality is equity" lies at the heart of ensuring as much as possible that the process of being able to sort out among the debtor, the creditors and other

[33] G.R. No. 74851, 09 December 1999.
[34] G.R. No. 175844, July 29, 2013.

stakeholders, the most feasible means possible to work-out a rehabilitation plan to the best interest of all stakeholders.[35]

Thus, the Commission, prior to the enactment of R.A. No. 8799 or the Securities Regulation Code (SRC), is **empowered to hear and determine all claims by creditors against the distressed corporation**.[36] Indeed, Section 5 of the SRC further declared that the Commission shall retain jurisdiction over pending suspension of payments/rehabilitation cases filed as of 30 June 2000 until finally disposed. This is the reason why the Commission should retain jurisdiction over the instant case, and any incidents thereof.

On a similar note, we like to take this opportunity to clarify and discuss the applicability to the instant case of the previous consolidated cases of "*Asset Pool A (SPV-AMC), Inc. vs. Armando Pan Jr., et al.*", SEC En Banc Case No. 12-12-276 and "*Bank of the Philippine Islands, et al. vs. SEC Special Hearing Panel 1, et al.*" SEC En Banc Case No. 12-12-279 (**VMC vs. APAA & BPI**), which was affirmed by the Court of Appeals[37] and Supreme Court[38].

In the said consolidated cases, the Commission was asked **to interpret a stipulation** (the exercise of VMC's right of first refusal) in the Mortgage Trust Indenture Agreement[39] (MTIA) between VMC and Bank of the Philippine Islands (BPI). Similarly, BPI assigned its right over VMC's obligation in the MTIA to Asset Pool A (SPV-AMC), Inc. (APAA). The Commission does ruled that it does not have jurisdiction to determine issues/matters which are not necessary or incidental to the rehabilitation proceedings and does not serve the purpose of rehabilitation. However, in the instant case, we are now asked **to determine DHB's claim** against VMC based on the subject issued RSDOs. Specifically, DHB's right to claim the 105,000 bags of refined sugar covered by the subject RSDOs which was assigned by PEPSI to the former.

Otherwise stated, VMC vs. APAA & BPI and the present case are differently situated. In VMC vs. APAA & BPI, the issue to be resolve is a determination of a right in an agreement/contract (MTIA), thus the Commission has no jurisdiction over the same. While in the present case, the issue to be resolve is a determination of a claim against the distressed corporation. Since the Commission is empowered to resolve and determine claims against a distressed corporation, we rule that we have jurisdiction over the instant case.

Having settled that the Commission has jurisdiction over all claims when it issued stay orders, it should also be pointed out that the Supreme Court had the occasion to rule on the coverage of claims specifically with regard to the VMC's rehabilitation. In *Malayan Insurance Company, Inc. vs.* ***Victorias Milling***

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[35] Philippine Corporate Law, 2010, Cesar Villanueva, page 760.
[36] Note 27, Supra.
[37] Annex "M" of the Appeal, Court of Appeals 5th Division's Decision dated 05 December 2014.
[38] Annex "N" of the Appeal, Supreme Court, 2nd Division's Notice dated 03 August 2015 and Annex "O" of the Appeal, Supreme Court 2nd Division's Notice dated 21 October 2015.
[39] Executed on 03 September 1991.

Company, Inc.[40], *Malayan* assails the CA's *Decision* affirming the suspension of the proceedings on its claim for reimbursement against VMC, the Supreme Court ruled that:

> "Clearly then, the complaint filed by petitioner against respondent falls under the category of "claim" whether under our rulings in *Finasia, Arranza* or *Kurangking*, or as defined in the Interim Rules, considering that it is for pecuniary considerations.
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> We have consistently held in *Rubberworld (Phils.) Inc. v. NLRC*, in *Sobrejuanite v. ASB Development Corporation*, and in *Garcia v. Philippine Airlines*, that **the suspension of proceedings** referred to in Section 6 (c) of Presidential Decree No. 902-A, which pertinently provides –
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> > x x x Provided, finally, that upon appointment of a management committee, rehabilitation receiver, board or body, pursuant to this Decree, all actions for claims against corporations, partnerships or associations under management or receivership pending before any court, tribunal, board or body, shall be suspended accordingly.
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> **uniformly applies to "all actions for claims"** filed against a corporation, partnership or association under management or receivership, **without distinction**.
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> Aptly cited in the assailed Court of Appeals decision is our pronouncement in *Rubberworld*, viz:
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> > x x x The law is clear: upon the creation of a management committee or the appointment of a rehabilitation receiver, all claims for actions "shall be suspended accordingly." x x x Since the **law makes no distinction or exemptions**, neither should this Court. *Ubi lex non distinguit nec nos distinguere debemos.*
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> Along the same vein, in *Sobrejuanite*, we enunciated:
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> > x x x The interim rules define a claim as referring to all claims or demands, of whatever nature or character against a debtor or its property, whether for money or otherwise. The definition is all-encompassing as it refers to all actions whether for money or otherwise. There are no distinctions or exemptions.
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> Similarly, in *Garcia v. Philippine Airlines*, we said:
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> > Since petitioners' claim against PAL is a money claim for their wages during the pendency of PAL's appeal to the

[40] G.R. No. 167768, April 17, 2009.

> NLRC, the same should have been suspended pending the rehabilitation proceedings. The Labor Arbiter, the NLRC, as well as the Court of Appeals should have abstained from resolving petitioners' case for illegal dismissal and should instead have directed them to lodge their claims before PAL's receiver.
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> and, very recently, in this Court's en banc Decision in the same *Garcia v. Philippine Airlines*, we had the occasion to restate this oft-repeated verdict, thus:
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> > It is settled that upon appointment by the SEC of a rehabilitation receiver, all actions for claims before any court, tribunal or board against the corporation shall ipso jure be suspended. As stated early on, during the pendency of petitioners' complaint before the Labor Arbiter, the SEC placed respondent under an Interim Rehabilitation Receiver. After the Labor Arbiter rendered his decision, the SEC replaced the Interim Rehabilitation Receiver with a Permanent Rehabilitation Receiver.
>
> The suspension of action for claims against a corporation under rehabilitation receiver or management committee embraces all phases of the suit, be it before the trial court or any tribunal or before this Court. Otherwise stated, what are automatically stayed or suspended are the proceedings of an action or suit and not just the payment of claims. Furthermore, the actions that are suspended cover all claims against a distressed corporation whether for damages founded on a breach of contract of carriage, labor cases, collection suits or any other claims of a pecuniary nature."

A year later, the Supreme Court reiterated, in *Castillo vs. Uniwide*[41], the definition of the term "claims", to wit:

> "In *Finasia Investments and Finance Corporation v. Court of Appeals*, the term "**claim**" **has been construed to refer to debts or demands of a pecuniary nature, or the assertion to have money paid.** It was referred to, in *Arranza v. B.F. Homes, Inc.*, as an **action involving monetary considerations** and in *Philippine Airlines v. Kurangking*, the term was identified as the **right to payment, whether or not it is reduced to judgment, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, legal or equitable, and secured or unsecured.** Furthermore, the actions that were suspended cover all claims against a distressed corporation whether for damages founded on a breach of contract of carriage, labor cases, collection suits or any other claims of a pecuniary nature. More importantly, the new rules on corporate rehabilitation, as well as the interim

[41] G.R. No. 169725, 30 April 2010.

> rules, provide an all-encompassing definition of the term and, thus, include all claims or demands of whatever nature or character against a debtor or its property, whether for money or otherwise. There is no doubt that petitioner's claim in this case, arising as it does from his alleged illegal dismissal, is a claim covered by the suspension order issued by the SEC, as it is one for pecuniary consideration."

Based on the above-discussion, DHB's claim for the delivery of 105,000 bags of refined sugar covered by the subject RSDOs, falls within the definition of "claims" covered by the stay order. Thus, it should be filed with the Commission. This is because DHB's claim emanates from its right over VMC's RSDOs. DHB's right was conveyed, transferred and assigned by PEPSI, as evidenced by the Deed of Assignment between DHB and PEPSI[42].

Moreover, it was never disputed that DHB's separate action (Civil Case No. 97-1520) for recovery of personal property with prayer for *Replevin* over the 105,000 bags of refined sugar was suspended and archived by the RTC pursuant to the stay order. In fact in the said case, it was VMC who moved for the suspension of this separate action. Likewise, VMC admitted and recognized the Commission's jurisdiction over DHB's claim when it filed its motion to suspend proceedings, to wit:

> "C) Based on the allegations on the Complaint, **it is evident that Plaintiff** (DHB) **considers itself to be a creditor of Defendant** (VMC). Whether or not there is any merit at all to this claim, **<u>the proper forum before which to ventilate it is the SEC and not this Honorable Court</u>**."[43]

Additionally, the Commission *En Banc* already allowed DHB's *Motion to Intervene,* when it ruled:

> "During the 18 February 1998 hearing, both parties were duly represented by their respective counsels and there ensued an exhaustive discussion on the pertinent issues of the case and the respective argument of both parties. Petitioner-appellee **VMC clarified that it has no objection to the intervention filed by DHB. <u>Both parties declared during the hearing that they have no objections to the SEC deciding the present controversy</u>**.
>
> The exclusive jurisdiction of the SEC over cases involving the assets and properties of a distressed firm under sec. 5 (d) of P.D. 902-A was upheld by the Supreme court in the case of *RCBC vs. IAC* (213 SCRA 830)
>
> In view of the foregoing, the instant appeal is hereby GRANTED. The Omnibus Order of the Hearing Panel dated 03 November 1997 is

[42] Note 22, *Supra.*
[43] Note 3, *Supra,* Records, page 217.

> thus MODIFIED, allowing the Motion for Leave to Intervene filed by Intervenor-Appellant DHB before the SICD."[44]

Clearly, VMC's admissions in the RTC and SHP proceedings are contrary to its present position which casts doubt to the arguments it has presented in this instant appeal.

In *Banaga, et al. vs. COSLAP, et al.*[45] the parties had conflicting free patent applications over a parcel of public land. On appeal to the Supreme Court, Banaga seeks the annulment of the decision Commission on the Settlement of Land Problems (COSLAP) on the ground that COSLAP has no jurisdiction to hear and resolve the controversy, and that it is the Bureau of Lands which has the jurisdiction over the dispute between the parties herein. It was held that:

> "Finally, assuming, *in gratia argumenti*, that the Provincial PACLAP Committee had no jurisdiction over the controversy, petitioners are already estopped from raising the issue of jurisdiction and from alleging at the same time that the case falls within the jurisdiction of the Bureau of Lands. **Petitioners had not raised this matter of lack of jurisdiction in their appeal to the PACLAP which was later replaced by the COSLAP.** What they alleged in their appeal, as one of their assigned errors, was that the PACLAP Provincial Committee exceeded its jurisdiction in ruling on the validity of the verbal agreement between the parties herein, which they contend to be properly within the jurisdiction of the civil courts. This is not the issue of jurisdiction which they are now raising before Us. In the instant petition, they now claim that jurisdiction belongs to the Bureau of Lands and not to the PACLAP.
>
> This Court has time and again **frowned upon the undesirable practice of party submitting his case for decision and then accepting the judgment, only if favorable, and attacking it for lack of jurisdiction when adverse**. Here, the principle of estoppel applies. Hence, a party may be estopped or barred from raising the question of jurisdiction for the first time in a petition before the Supreme Court when it failed to do so in the early stages of the proceedings. This principle should deter those who are disposed to trifle with the courts by taking inconsistent positions contrary to the elementary principles of right dealing and good faith. Further, the rule is settled that this Court cannot allow a litigant to assume a different posture when he comes before the court and challenges the position whereby the court, which is supposed to review administrative determinations, would not review, but determine and decide for the first time, a question not raised in the administrative forum."

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[44] Note, 7 *Supra.*

[45] G.R. No. L-66386 January 30, 1990 citing Capilitan v. de la Cruz, Nos. L-29536-37, February 28, 1974, 55 SCRA 706; Marquez v. Secretary of Labor, G.R. 80685, March 16, 1989, Cuerdo v. Commission on Audit, G.R. No. 84592, October 27, 1988.

To reiterate, it was VMC which filed, on 09 July 1999, a motion to suspend proceedings with the RTC on the ground that the Commission had already acquired jurisdiction over the rehabilitation case when it issued a *Stay Order*. Moreover, VMC participated in the proceedings before the SICD Hearing Panel. In fact, it presented evidence in support of its defense. However, after failing to obtain an affirmative relief from the SHP, VMC now invokes the Commission's lack of jurisdiction over DHB's claim. Pursuant to principles laid down in *Banaga*, which cited *Tijam vs. Sibonghanoy*[46], VMC should be estopped from questioning the Commission's jurisdiction based not only on estoppel *in pais* but estoppel by laches as well.

As to VMC's argument that rehabilitation proceedings are summary and non-adversarial in nature, we are not persuaded. VMC anchored its argument on the Supreme Court cases of *Advent Capital vs. Alcantara, et al.*[47] and *Express Investment III Private Ltd. et al. vs. Bayan Telecommunications, Inc. et al.*[48]. A close reading of the same would, however, show that these cases find no application.

In *Advent Capital* case, it is the distressed corporation which is the creditor seeking to recover its claim from a third party in the rehabilitation proceedings. The Supreme Court ruled that the rehabilitation court has no power to resolve disputes between *Advent* (as creditor) and its claim against third parties. Thus, the Supreme Court ruled that it should file a separate action for recovery of its claim. In the instant case, PEPSI is not a third party. VMC recognized and even paid for several RSDOs that PEPSI presented. Thus, VMC is not disputing the claim (RSDOs) but merely argues that "since no warehouse receipt was presented to VMC, there is no obligation or latter's part to deliver the goods".[49]

Similarly, in *Express Investment* case, the Supreme Court ruled that claim of costs (payment to accountants, financial experts, lawyers, etc.) incurred by creditors in pursuing their claim cannot be included in the rehabilitation proceedings.

Both of these cases do not fall squarely to the facts of the instant case, hence these are not applicable.

Finally, it is clearly provided in Section 2-4 of the SEC Rules of Procedure on Corporate Recovery that:

> "Section 2-4. Permissive intervention – On motion and for good cause shown, the Commission may permit any interested party to intervene generally or with respect to any specified matter."

[46] 131 Phil. 556, the Court held that a party may be barred by laches from invoking lack of jurisdiction at a late hour for the purpose of annulling everything done in the case with the active participation of said party invoking the plea of lack of jurisdiction.
[47] G.R. No. 183050, 25 January 2012.
[48] G.R. No. 174457-59, 05 December 2012.
[49] Paragraph 12, page 5, VMC's Answer, Records, page 77.

As above-provided, the Commission can allow an interested party to intervene in VMC's rehabilitation proceedings. The Commission is given the discretion to determine which interested party may participate in the rehabilitation proceedings of a distressed corporation.

VMC's liability to DHB vis-à-vis the RSDOs covering 105,000 bags of refined sugar

VMC's asserts that SHP1 erred in ruling that a *quasi-contract* was created between the VMC and DHB. It argues that VMC was not privy or a party to the loan transactions between NNMCI and DHB nor it received the proceeds of the same. It contends that there is no categorical or definite finding showing that VMC benefited from DHB. Aside from that, VMC claims that SHP1 also erred in considering the Affidavit of Ma. Lourdes L. Molina in computing the monetary value of the remaining 105,000 bags of refined sugar. It claims that Ms. Molina was not the one who prepared the Purchase Order Nos. 59123[50] and 59125[51] which was the basis for the said computation.

While, DHB argues that when VMC issued the subject RSDOs and certified the same, it was unjustly enriched when it refused to release the remaining bags of sugar to PEPSI and DHB. Likewise, DHB avers that VMC acknowledged these RSDOs and even partially performed its obligation when the latter delivered 45,000 bags to PEPSI. It further argues that SHP1 was correct in computing the monetary value of the remaining bags since VMC did not present any contrary evidence. Lastly, DHB maintains that the RSDOs were intended as collateral to NNMCI's loan and these RSDOs were assigned to the former, hence it has a right to claim the same.

We find merit in DHB's position.

A *quasi-contracts* are those juridical relations arising from lawful, voluntary and unilateral acts give rise to the juridical relation of quasi-contract to the end that no one shall be unjustly enriched or benefited at the expense of another[52]. In this case, there was no definite determination that VMC benefitted from the NNMCI's loan with DHB. Thus, it cannot be said that VMC was unjustly enriched with NNMCI's loan.

On the other hand, an assignment of credit/right is the process of transferring the right of the assignor to the assignee, who would then be allowed to proceed against the debtor. It may be done either gratuitously or onerously, in which case, the assignment has an effect similar to that of a sale.[53] In an

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[50] Note 17, Supra.
[51] Note 18, Supra.
[52] Article 2142 of the New Civil Code.
[53] Nyco Sales Corporation vs. BA Finance Corporation, et al., G.R. No. 71594, 16 August 1991.

assignment of credit/right, the consent of the debtor is not essential in order that it may produce legal effects. Hence, the duty to pay does not depend on the consent of the debtor; otherwise, all creditors would be prevented from assigning their credits/rights because of the possibility of the debtors' refusal to give consent.[54]

Furthermore, in *Victorias Milling Co., Inc. vs. Court of Appeals and Consolidated Sugar Corporation*[55], wherein *Consolidated Sugar Corporation* became the holder/owner of VMC's Shipping List/Delivery Receipts (SLDRs), the Supreme Court ruled that when there is a transfer of title to the buyer or its assignee, VMC is obliged to deliver the same to the said buyer or its assignee, thus:

> "The aforequoted terms and conditions clearly show that petitioner transferred title to the sugar to the buyer or his assignee upon payment of the purchase price. Said terms clearly establish a contract of sale, not a contract to sell. Petitioner is now estopped from alleging the contrary. The contract is the law between the contracting parties. And where the terms and conditions so stipulated are not contrary to law, morals, good customs, public policy or public order, the contract is valid and must be upheld. <u>**Having transferred title to the sugar in question, petitioner is now obliged to deliver it to the purchaser or its assignee**</u>."

In the instant case, VMC cannot deny the fact that when PEPSI assigned its right to claim the remaining 105,000 bags of refined sugar to DHB, the latter is now claiming the right to the refined sugar covered by the subsequent RSDOs. Moreover, it indubitable that VMC has an agreement with PEPSI to deliver the remaining bags of refined sugar for the reason that it already partially performed its obligation to the latter when: 1.) it cancelled RSDO No. 37977 and issued 20 RSDOs to PEPSI; 2.) it delivered 45,000 bags to PEPSI when the latter surrendered RSDO Nos. 38473, 38483-38486, 38487 and 38488; 3.) it received payment of the corresponding tolling fees amounting to Php 10,123,845.76 for hauling the refined sugar. Based on this established fact, VMC is estopped from denying its obligation to DHB to deliver 150,000 bags of refined sugar.

In other words, DHB's right to claim the 105,000 bags of sugar, covered by the subject RSDOs, comes from PEPSI by virtue of the Deed of Assignment dated 25 June 1997[56] and not from VMC's certification dated 03 December 1996. Thus, DHB (assignee) steps into the shoes of PEPSI (assignor), the former acquiring the latter's right to claim the 105,000 bags of refined sugar. In essence, DHB became

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[54] Sison vs. Yap Tico, 37 Phil. 587 (1918); Rodriguez vs. Court of Appeals. 207 SCRA 553 (1992).

[55] G.R. No. 117356, 19 June 2000.

[56] Note 22, Supra – Section 1. SALE – The <u>ASSIGNOR (PEPSI) hereby transfers, conveys and assigns to the ASIGNEE (DHB) all its rights, title and interests under Purchase Order Nos. 59123 and 59125 both dated 18 March 1997 and the fifteen (15) RSDOs</u> enumerated in Annex "A" hereof, including the right to obtain the delivery of one hundred five thousand (105,000) bags of refined sugar covered by the RSDOs enumerated in Annex "A" hereof from Victorias Milling Company, Inc. and to collect any tolling fees already paid, but not due, to said Company.

the creditor of VMC as to the remaining 105,000 bags of refined sugar, by virtue of the Deed of Assignment and not because of *quasi-contract.*

As to the monetary equivalent of the 105,000 bags of refined sugar, we agree with the SHP1's computation. The basis for such computation is found in PEPSI's Purchase Order Nos. 59123 and 59125. This was further corroborated by the Affidavit of Ms. Ma. Lourdes Molina who testified as to the amount of Php 605.47 per bag of sugar. VMC argues that Ms. Molina's affidavit should not be given any credence on the ground that the latter has no personal knowledge in the preparation of the said purchase orders. However, a close reading of Ms. Molina's affidavit will show that she facilitated in the processing of the subject purchase orders[57]. Hence, she has personal knowledge of these transactions.

Thus, when DHB steps into the shoes of PEPSI, the original agreement between VMC and PEPSI still remains. Hence, the terms and conditions, which includes the value of bags of refined sugar is still the same. Thus, it was correct for SHP1 to use as basis the amount stated in said purchase orders in computing the monetary value of the bags of refined sugar.

As for the tolling fees, we affirm the SHP1's ruling. It was established based on the facts and evidence presented that PEPSI paid to VMC tolling fees amounting to Php 10,123,845.76 for the delivery of 65,000 bags of refined. This was admitted by VMC's counsel in the latter's *Answer to the Request for Admission*[58] in the SICD proceedings. VMC however, argues that its former counsel, Atty. Pacifico Agabin, was not authorized by VMC or its board to submit the subject *Answer to the Request for Admission.* VMC's argument is unmeritorious. Records reveal that Atty. Agabin is VMC's counsel of record during that time. It has been consistently ruled by the Supreme Court that the negligence and mistakes of counsel bind the client. A departure from this rule would bring about never-ending suits, so long as lawyers could allege their own fault or negligence to support the client's case and obtain remedies and reliefs already lost by the operation of law.[59]

Likewise, it is also established that VMC received the amount of Php 10,123,848.76 but only delivered 45,000 bags of refined sugar to PEPSI. Thus, VMC still holds tolling fees, advanced by PEPSI, for the undelivered 20,000 bags of refined sugar[60]. These remaining tolling fees in VMC's possession are included in PEPSI's assignment to DHB. Hence, DHB may demand such amount from VMC.

Finally, records of the Commission show that, on 29 April 2002, VMC executed a Debt Restructuring Agreement with its creditors. Section 20 thereof provides:

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[57] Pages 10-18 of Lourdes Molina's Affidavit dated 30 March 1999.
[58] Answer to the Request for Admission dated 26 April 1999.
[59] Building Care Corporation, et al. vs. Macaraeg, G.R. No. 198357, 10 December 2012.
[60] Covered by RSDO Nos. 38487 and 38488.

> "19.1 VMC's subsidiary, North Negros Marketing Company, Inc. (Nonemarco) used Refined Sugar Delivery Orders (RSDOs) purportedly issued by VMC to avail of loans from Dao Heng Bank, Land Bank of the Philippines, BPI, Metrobank and Asian Bank (the "RSDO Claimants") allegedly in the total principal amount of approxiamately One Billion One Hundred Thirty Four Million Pesos (P1.134 Billion). The RSDO Claimants are asking VMC to either deliver to them the quantity of sugar covered by their respective RSDOs or absorb the debts of Nonemarco. AS of date of execution of this Agreement, the RSDO Claims are still subject of a pending litigation before the SEC. However, in the event that VMC shall eventually be held liable by final judgment to pay such RSDO Claims or a portion thereof, VMC shall restructure the RSDO Claims or a portion thereof under the same terms and conditions of the terms of restructuring for VMC.s currently UNSECURED CREDITORS. x x x"

WHEREFORE, premises considered, the instant appeal is hereby **DENIED.** The Special Hearing Panel 1's *Order* dated 06 January 2015 is **AFFIRMED with MODIFICATIONS.** VMC is **DIRECTED** to comply with said SHP's *Order* pursuant to Section 19 of the Debt Restructuring Agreement dated 29 April 2002.

SO ORDERED.

Pasay City, 29 November 2016.

TERESITA J. HERBOSA
Chairperson

MANUEL HUBERTO B. GAITE
Commissioner

ANTONIETA F. IBE
Commissioner

EPHYRO LUIS B. AMATONG
Commissioner

BLAS JAMES G. VITERBO
Commissioner