Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

MARILYN VICTORIO-AQUINO, Petitioner,	**G.R. No. 193108**
	Present:
- versus -	VELASCO, JR., *J.*, *Chairperson*, PERALTA, VILLARAMA, JR., MENDOZA,* and REYES, *JJ.*
PACIFIC PLANS, INC. and MAMERTO A. MARCELO, JR. (Court-Appointed Rehabilitation Receiver of Pacific Plans, Inc.), Respondents.	**Promulgated:** December 10, 2014

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DECISION

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court which seeks to annul and set aside the Decision[1] of the Special First Division of the Court of Appeals (*CA*), dated February 26, 2010, and its Resolution[2] dated July 21, 2010 denying petitioner's Motion for Reconsideration in the case entitled *Marilyn Victorio-Aquino v. Pacific Plans, Inc. and Mamerto A. Marcelo, Jr.*, docketed as CA-G.R. SP No. 105237.

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* Designated Acting Member in lieu of Associate Justice Francis H. Jardeleza, per Special Order No. 1896 dated November 28, 2014.

1 Penned by Associate Justice Isaias P. Dicdican, with Associate Justices Andres B. Reyes, Jr. and Rodil V. Zalameda, concurring; Annex "A" to Petition, *rollo*, pp. 73-84.

2 Annex "B" to Petition, *id.* at 85-87.

Respondent Pacific Plans, Inc. (now Abundance Providers and Entrepreneurs Corporation or "APEC")[3] is engaged in the business of selling pre-need plans and educational plans, including traditional open-ended educational plans (*PEPTrads*). PEPTrads are educational plans where respondent guarantees to pay the planholder, without regard to the actual cost at the time of enrolment, the full amount of tuition and other school fees of a designated beneficiary.[4]

Petitioner is a holder of two (2) units of respondent's PEPTrads.[5]

On April 7, 2005, foreseeing the impossibility of meeting its obligations to the availing planholders as they fall due, respondent filed a Petition for Corporate Rehabilitation with the Regional Trial Court (*Rehabilitation Court*), praying that it be placed under rehabilitation and suspension of payments pursuant to Presidential Decree (*P.D.)* No. 902-A, as amended, in relation to the Interim Rules of Procedure on Corporate Rehabilitation (*Interim Rules*).[6] At the time of filing of the Petition for Corporate Rehabilitation, respondent had more or less thirty four thousand (34,000) outstanding PEPTrads.[7]

On April 12, 2005, the Rehabilitation Court issued a Stay Order, directing the suspension of payments of the obligations of respondent and ordering all creditors and interested parties to file their comments/oppositions, respectively, to the Petition for Corporate Rehabilitation.[8] The same Order also appointed respondent Mamerto A. Marcelo (*Rehabilitation Receiver*) as the rehabilitation receiver and set the initial hearing of the case on May 25, 2005.[9]

Pursuant to the prevailing rules on corporate rehabilitation, respondent submitted to the Rehabilitation Court its proposed rehabilitation plan. Under the terms thereof, respondent proposed the implementation of a "Swap,"[10]

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3 On May 24, 2004, the SEC issued an Order of even date, revoking the previously approved Certificate of Registration of Lifetime Plans, Inc. (*Lifetime*) for its alleged failure to comply with the requirements on transfer of property for shares. Lifetime was incorporated as a spin-off company of respondent such that Lifetime shall manage the fixed-value plans (*i.e.,* fixed-value education, memorial and pension plans) while respondent shall manage the traditional educational plans. The purpose of the spin-off was to assist in improving the efficiency and focus of these distinct businesses, with the end in view of assuring that the trust funds of the respective products of respondent shall remain intact and that its value, as well as the operating profits of respondent, will be used solely to service and strengthen the trust assets for each particular product line. (Comment to Petition, *rollo*, p. 480)

4 *Rollo*, p. 48.

5 *Id.* at 48-49.

6 *Id.* at 49.

7 Annex "J" to Petition, *rollo*, p. 235.

8 *Id.* at 237.

9 *Id*.

10 Under the "Swap," the planholder, whether availing or non-availing, will surrender his PEPTrad/s in exchange for a fixed-value pre-need plan (*New Plan/s*) designed for a specific purpose, *i.e.,* to realize a return on contribution at or near historical time deposit rates across all maturities. Upon surrender by the

which will essentially give the planholder a means to exit from the PEPTrads at terms and conditions relative to a termination value that is more advantageous than those provided under the educational plan in case of voluntary termination.[11]

On February 16, 2006, the Rehabilitation Receiver submitted an Alternative Rehabilitation Plan (*ARP*) for the approval of the Rehabilitation Court. Under the ARP, the benefits under the PEPTrads shall be translated into fixed-value benefits as of December 31, 2004, which will be termed as Base Year-end 2004 Entitlement, and shall be computed as follows: (i) *for availing plan holders*, based on fifty-percent (50%) of Average School Fee of SY 2005-2006 for every remaining year of availment; (ii) *for non-availing (Group 1) plan holders*,[12] based on the higher of Base Year-end 2004 Entitlement under the Rehabilitation Proposal or fifty-percent (50%) of Average School Fee of SY 2005-2006 for every year of availment; and (iii) *for non-availing (Group 2) plan holders*,[13] based on the planholders' contributions with seven percent (7%) net interest per annum from date of full payment on record to December 31, 2004.[14] The Base Year-end Entitlement will be covered by a Rehabilitation Plan Agreement in lieu of a fixed-value plan.[15]

For petitioner, she is entitled to receive an aggregate amount consisting of: (a) the value of her total contributions plus interest at the rate of seven percent (7%) from the date of full payment until December 31, 2005 (*Net Translated Value*); and (b) interest on the Net Translated Value at the annual rate of seven percent (7%) from January 1, 2006 until 2010.[16]

The ARP also provided for tuition support for each enrolment period until SY 2009-2010 depending on the prevailing market rate of the NAPOCOR Bonds and Peso-Dollar exchange rate.[17] The tuition support is

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planholder of his traditional educational plan in exchange for the New Plan/s, respondent will be considered discharged from all obligations under the PEPTrads. The New Plans will be secured by NAPOCOR bonds, which are guaranteed by the Philippine Government and are currently part of the trust fund that respondent created exclusively for PEPTrads, as required by the rules and regulations of the Securities and Exchange Commission (SEC); however, upon issuance of the New Plans, the corresponding value at maturity of the NAPOCOR bonds equivalent to maturity benefit of the New Plans will be released from the trust fund, to be created exclusively to secure payment of the obligations of respondent under the New Plans. The yield to maturity of the New Plans from value date January 10, 2005 is at seven percent (7%) net per annum; maturity date of the New Plans is in 2010. The proposed Swap, in effect, assures planholders of the return of their investments with a corresponding premium of seven percent (7%) net per annum. (*Supra* note 7, at 236)

11 *Id.* at 235.

12 This refers to owners of fully-paid plans who are expected to start receiving education benefits between years 2005 to 2009.

13 This refers to owners of fully-paid plans who are expected to start receiving education benefits before 2010.

14 *Supra* note 7, at 237.

15 *Id.* at 238.

16 *Rollo*, pp. 49-50.

17 *Supra* note 7, at 238.

computed as the lesser of the remaining balance of Base Year-end 2004 Entitlement, the last-term tuition or reimbursement on record and the following tuition support ceiling:

Availment Mode	Ceiling (in Php)
Annual	₱20,000.00
Semester	₱10,000.00
Trimester	₱6,000.00[18]

These tuition support payments are considered advances from the Base Year-end 2004 Entitlement.[19]

As to the funding for the tuition support, the same shall be sourced from either two (2) ways:

> (1) Outright sale of the NAPOCOR bonds and conversion of Dollar proceeds to Peso, up to the equivalent of the tuition support requirements. The payment of the tuition support will be dependent on the terms and exchange rate under which the bonds are liquidated; or
>
> (2) Forward sale of the underlying Dollars to a financial institution, which then issues notes credit linked with NAPOCOR Bonds. The notes can then be sold to interested financial institution to provide for liquidity to fund the requirements for tuition support.[20]

The creditors/oppositors did not oppose/comment on the Rehabilitation Receiver's ARP, although the Parents Enabling Parents Coalition, Inc. (*PEPCI*) filed with the CA, a Petition for *Certiorari* with Application for a TRO/Writ of Preliminary Injunction dated February 10, 2006. As no TRO/Writ of Preliminary Injunction has been issued against the conduct of further proceedings, on April 27, 2006, the Court issued a Decision[21] approving the ARP, which cradled several appeals filed with the CA, and later on, to this Court that are still pending resolution.[22]

Nevertheless, respondent commenced with the implementation of its ARP in coordination with, and with clearance from, the Rehabilitation Receiver.[23]

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18 *Id.*
19 *Id.*
20 Annex "F" to Petition, *rollo*, p. 172.
21 *Id.* at 170.
22 *Rollo*, p. 50.
23 *Id.*

In the meantime, the value of the Philippine Peso strengthened and appreciated. In view of this development, and considering that the trust fund of respondent is mainly composed of NAPOCOR bonds that are denominated in US Dollars, respondent submitted a manifestation with the Rehabilitation Court on February 29, 2008, stating that the continued appreciation of the Philippine Peso has grossly affected the value of the U.S. Dollar-denominated NAPOCOR bonds, which stood as security for the payment of the Net Translated Values of the PEPTrads.[24]

Thereafter, the Rehabilitation Receiver filed a Manifestation with Motion to Admit dated March 7, 2008, echoing the earlier tenor and substance of respondent's manifestation, and praying that the Modified Rehabilitation Plan (*MRP*) be approved by the Rehabilitation Court. Under the MRP, the ARP previously approved by the Rehabilitation Court is modified as follows: (a) suspension of the tuition support; (b) converting the Philippine Peso liabilities to U.S. Dollar liabilities by assigning to each planholder a share of the remaining asset in proportion to the share of liabilities in 2010; and (c) payments of the trust fund assets in U.S. Dollars at maturity.[25]

After the submission of comments/opposition by the concerned parties, the Rehabilitation Court issued a Resolution[26] dated July 28, 2008 approving the MRP. In approving the same, the Rehabilitation Court reasoned that in view of the "cram down" power of the rehabilitation court under Section 23 of the Interim Rules, courts have the power to approve a rehabilitation plan over the objection of creditors and even when such proposed rehabilitation plan involves the impairment of contractual obligations.[27]

Petitioner questioned the approval of the MRP before the CA on September 26, 2008. It likewise prayed for the issuance of a TRO and a writ of preliminary injunction to stay the execution of the Resolution dated July 28, 2008.[28]

In dismissing or denying the Petition for Review, the CA held that: (a) petitioner did not pay the proper amount of docket fees; (b) a Petition for Review under Rule 43 is an improper remedy to question the approval of a modified rehabilitation plan; (c) contrary to petitioner's claim, the alterations in the MRP are consistent with the goals of the ARP; and (d) the approval of

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24 Comment to Petitioner, *rollo*, pp. 489-490.
25 *Id.* at 490.
26 *Id.* at 493-494.
27 *Rollo*, p. 52.
28 *Id.*

the MRP did not amount to an impairment of the contract between petitioner and respondent. The *fallo* of the assailed Decision[29] states:

> **WHEREFORE**, in view of the foregoing premises, judgment is hereby rendered by us **DENYING** or **DISMISSING** the petition for review filed in this case and **AFFIRMING** the corporate rehabilitation Court's Resolution dated July 28, 2008 in Special Proceeding No. M-6059.[30]

Unfortunately for petitioner, despite its motion for reconsideration, the CA denied the same on July 21, 2010.[31]

Hence, this Petition for Review on *Certiorari* raising the following grounds:

> I
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> The Court of Appeals rendered a decision contrary to law and not in accord with the applicable decisions of the Supreme Court when it sustained the Rehabilitation Court's approval of the Modified Rehabilitation Plan.
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> II
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> The Court of Appeals rendered a decision contrary to law when it ruled that a Petition for Review was an improper remedy to question a final order of the Rehabilitation Court approving the Modified Rehabilitation Plan.
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> III
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> The Court of Appeals rendered a decision not in accord with the issuances of the Supreme Court and the usual course of judicial proceedings when it declared that Petitioner had not paid the proper amount of filing and docket fees, despite the fact that, as clearly shown in the receipts presented by petitioner, the proper amount of filing fees were paid.[32]

In its Comment dated October 23, 2006, respondent raised various procedural infirmities on the petition warranting its dismissal, to wit: (1) the assailed decision has become final and executory for failure of petitioner to timely serve a copy of the Petition for Time upon the CA in violation of Section 3, Rule 45 of the Rules of Court; (2) petitioner's motion for reconsideration on the questioned decision raises no new arguments; thus, is merely *pro forma* and did not toll the running of the reglementary period; (3) a petition for review under Rule 43 of the Rules of Court is an improper

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29 *Supra* note 1.
30 *Id.* at 84.
31 *Id.* at 87.
32 *Rollo*, p. 53.

mode to question the MRP; and (4) petitioner failed to pay the appropriate amount of docket fees when she filed the Petition for Review with the CA.[33]

On procedural grounds, this Court finds for the petitioner.

First. Respondent asseverates that the CA correctly held that the Petition for Review under Rule 43 of the Rules of Court is an improper mode to question the Resolution approving the MRP, since the same constitutes merely as an interlocutory order and, therefore, a proper subject of a *certiorari* case under Rule 65 of the Rules of Court. On the other hand, petitioner counters that such Resolution is a final order with respect to the approval of the MRP; hence, her recourse to a Petition for Review under Rule 43 of the Rules of Court was proper. Petitioner further argues that such remedy is clearly in line with the directive of AM No. 04-9-07-SC,[34] which took effect on October 15, 2004 and, therefore, was the correct rule on appeals prevailing at the time petitioner filed her petition with the CA.[35]

Petitioner's contention is impressed with merit.

It bears emphasis that the governing rule at the time respondent filed its petition for rehabilitation was the Interim Rules, which does not expressly state the mode of appeal from the decisions, orders and resolutions of the Rehabilitation Court, either prior or after the approval of the rehabilitation plan. Accordingly, this Court issued a Resolution, A.M. No. 04-9-07-SC,[36] which lays down the proper mode of appeal in cases involving corporate rehabilitation and intra-corporate controversies in order to prevent cluttering the dockets of the courts with appeals and/or petitions for *certiorari*. The first paragraph thereof provides:

> 1. ***All decisions and final orders*** in cases falling under the ***Interim Rules of Corporate Rehabilitation*** and the Interim Rules of Procedure Governing Intra-Corporate Controversies under Republic Act No. 8799 shall be ***appealable to the Court of Appeals through a petition for review under Rule 43 of the Rules of Court.***[37]

Under the said Resolution, all decisions and final orders of the rehabilitation court, regardless of whether they are issued before or after the approval of the rehabilitation court, shall be brought on appeal to the CA *via* a petition for review under Rule 43 of the Rules of Court.

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33 Comment to Petition, *rollo*, pp. 20-22.

34 RE: MODE OF APPEAL IN CASES FORMERLY COGNIZABLE BY THE SECURITIES AND EXCHANGE COMMISSION.

35 *Rollo*, p. 62.

36 *Supra* note 34.

37 Emphasis supplied.

Subsequently, the Supreme Court issued A.M. No. 00-8-10-SC[38] (*Rehabilitation Rules*), which took effect on January 16, 2009, embodying the rehabilitation rules applicable to petitions for rehabilitation of corporations, partnerships and associations pursuant to P.D. No. 902-A, as amended. Section 1, Rule 8 thereof unequivocally states:

> SEC. 1. *Motion for Reconsideration*. — A party may file a motion for reconsideration of any order issued by the court prior to the approval of the rehabilitation plan. No relief can be extended to the party aggrieved by the court's order on the motion through a special civil action for certiorari under Rule 65 of the Rules of Court. Such order can only be elevated to the Court of Appeals as an assigned error in the petition for review of the decision or order approving or disapproving the rehabilitation plan.
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> ***An order issued after the approval of the rehabilitation plan can be reviewed only through a special civil action for certiorari under Rule 65 of the Rules of Court***.[39]

While We agree with respondent that the later rule states that orders issued after the approval of the rehabilitation plan can be reviewed only through a special civil action for *certiorari* under Rule 65 of the Rules of Court, such rule does not apply to the instant case as the same was not yet in effect at the time petitioner filed her Petition for Review with the CA. Stated otherwise, the prevailing law at the time petitioner filed said petition with the CA is the Interim Rules as well as A.M. No. 04-9-07-SC. As such, the proper remedy of appeal from all decisions and final orders of the RTC was Rule 43 of the Rules of Court, and not Rule 65 thereof.

In any case, We cannot also subscribe to respondent's view that the approval of the MRP is merely an interlocutory order. In *Alma Jose v. Javellana*,[40] We have already defined a final order as one that puts an end to the particular matter involved, or settles definitely the matter therein disposed of, as to leave nothing for the trial court to do other than to execute the order.[41] Here, it cannot be gainsaid that the Resolution approving the MRP is a final order with respect to the validity thereof, specifically on the following issues: (1) the suspension of the tuition support; (2) conversion of Philippine Peso entitlements to U.S. Dollar entitlements; and (3) the payments in U.S. Dollars upon maturity in 2010. In this regard, the issue as to its alleged infringement on the non-impairment clause under the Constitution has likewise been settled. The doctrine laid down in *New Frontier Sugar Corp. v. Regional Trial Court Branch 39, Iloilo City*,[42]

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38 RULES OF PROCEDURE ON CORPORATE REHABILITATION.
39 Emphasis supplied.
40 G.R. No. 158239, January 25, 2012, 664 SCRA 11.
41 *Alma Jose v. Javellana*, *supra*, at 13-14.
42 542 Phil. 587 (2007).

cannot be used to counter the foregoing because in that case, the Court merely stressed that an original action for *certiorari* may be directed against an interlocutory order of the lower court prior to an appeal from the judgment; or where there is no appeal or any plain, speedy or adequate remedy.[43] *New Frontier* does not categorically preclude the filing of a petition for review under Rule 43 for decisions or orders issued after the approval of the rehabilitation plan such as a modification thereof.

Second. We find respondent's contention on the non-payment of the docket fees devoid of merit because the records rather show that petitioner had, in fact, paid the appropriate amount of docket fees for her Petition with the CA and her application for a TRO on September 12, 2008. To support this allegation, petitioner attached copies of official receipts, representing the fees she has paid in the aggregate amount of Four Thousand Six Hundred Eighty Pesos (₱4,680.00).

Third. With respect to respondent's allegation that petitioner violated Section 2,[44] in relation to Section 3,[45] Rule 45 of the Rules of Court, in particular the failure of petitioner to serve a copy of its petition for time with the CA within the prescribed period, the same is mislaid.

A careful examination of the records will show that said petition was personally served on the CA on August 17, 2010, within the prescribed period pursuant to Sections 2 and 3, Rule 45 of the Rules of Court. This is the most logical explanation since the Manifestation regarding such service, together with the attached Petition for Time, was filed on August 18, 2010. Thus, the date "August 27, 2010" on the stamp of the CA is clearly a clerical error and respondent's assertion that the CA was not timely served the Petition for Time is erroneous.

Similarly, owing to the significance of the issues raised in the instant case, We rule that any lapse on the filing of the motion for reconsideration with the CA is not grave enough to dismiss the instant petition on technical

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43 *Id.* at 597.

44 Section 2, Rule 45 of the Rules of Court provides that:

Sec. 2. Time for filing; extension.

The petition shall be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment. On motion duly filed and served, with full payment of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Supreme Court may for justifiable reasons grant an extension of thirty (30) days only within which to file the petition.

45 Section 3, Rule 45 of the Rules of Court provides that:

Sec. 3. Docket and other lawful fees; proof of service of petition.

Unless he has theretofore done so, the petitioner shall pay the corresponding docket and other lawful fees to the clerk of court of the Supreme Court and deposit the amount of P500.00 for costs at the time of the filing of the petition. Proof of service of a copy thereof on the lower court concerned and on the adverse party shall be submitted together with the petition.

grounds. Moreover, it is settled that although a motion for reconsideration may merely reiterate issues already passed upon by the court, that, by itself, does not make it *pro forma*. In fact, the CA did not declare said motion for reconsideration as *pro forma* when it denied the same. Hence, considering that the motion for reconsideration is not *pro forma* and a mere scrap of paper, its filing tolled the running period of appeal pursuant to Section 2,[46] Rule 37 of the Rules of Court.

Fourth. Anent the Verification and Certification against Forum Shopping of the instant petition, we recognize that petitioner failed to comply with Section 6, Rule II of A.M. No. 02-8-13-SC, otherwise known as the Rules on Notarial Practice of 2004 (*Notarial Rules*), which provides that in order for a jurat to be valid, the following requirements should be present:

> SEC. 6. *Jurat.* - "Jurat" refers to an act in which an individual on a single occasion:
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> (a) appears in person before the notary public and presents an instrument or document;
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> (b) is personally known to the notary public or identified by the notary public through ***competent evidence of identity*** as defined by these Rules;
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> (c) signs the instrument or document in the presence of the notary; and
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> (d) takes an oath or affirmation before the notary public as to such instrument or document.[47]

as well as Section 12, Rule II of the Notarial Rules, which defines what constitutes competent evidence of identity, to wit –

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[46] Section 3, Rule 37 of the Rules of Court provides that:

Sec. 2. Contents of motion for new trial or reconsideration and notice thereof.

The motion shall be made in writing stating the ground or grounds therefor, a written notice of which shall be served by the movant on the adverse party.

A motion for new trial shall be proved in the manner provided for proof of motions. A motion for the cause mentioned in paragraph (a) of the preceding section shall be supported by affidavits of merits which may be rebutted by affidavits. A motion for the cause mentioned in paragraph (b) shall be supported by affidavits of the witnesses by whom such evidence is expected to be given, or by duly authenticated documents which are proposed to be introduced in evidence.

A motion for reconsideration shall point out specifically the findings or conclusions of the judgment or final order which are not supported by the evidence or which are contrary to law, making express reference to the testimonial or documentary evidence or to the provisions of law alleged to be contrary to such findings or conclusions.

A *pro forma* motion for new trial or reconsideration shall not toll the reglementary period of appeal.

[47] Emphasis supplied.

> SEC. 12. *Competent Evidence of Identity*. - The phrase "competent evidence of identity" refers to the identification of an individual based on:
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> (a) at least one current identification document issued by an official agency bearing the photograph and signature of the individual; or
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> (b) the oath or affirmation of one credible witness not privy to the instrument, document or transaction who is personally known to the notary public and who personally knows the individual, or of two credible witnesses neither of whom is privy to the instrument, document or transaction who each personally knows the individual and shows to the notary public documentary identification.

While we agree with the observation of respondent that in the instant Petition, the Verification and Certification against Forum Shopping attached thereto is defective because the jurat thereof does not contain the required competent evidence of identity of the affiant, petitioner herein, such omission may be overlooked in the name of judicial leniency, in order to give this Court an avenue to dispose of the substantive issues of this case.

As to respondent's allegation that the instant petition contained a false Certification of Non-Forum Shopping since the same failed to disclose the pendency of a related petition pending before the CA, the same warrants scant consideration.

While it would appear that there is substantial identity of parties, since both petitioner and PEPCI are creditors of respondent and both are questioning the Rehabilitation Court's approval of the MRP, the identity of cause of action is absent in the present case. An assiduous scrutiny of the respondent's Petition for Review with the CA and PEPCI's Petition for Review dated September 3, 2008, also filed with the CA, will show that they raised different causes of action. In *Majority Stockholders of Ruby Industrial Corporation v. Lim*,[48] we have reiterated that no forum shopping exists when two (2) groups of oppositors in a rehabilitation case act independently of each other, even when they have sought relief from the same appellate court, thus:

> On the charge of forum shopping, we have already ruled on the matter in G.R. Nos. 124185-87. Thus:
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> > We hold that private respondents are not guilty of forum shopping. In *Ramos, Sr. v. Court of Appeals*, we ruled:

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[48] G.R. No. 165887 and G.R. No. 165929, June 6, 2011, 650 SCRA 461.

> "The private respondents can be considered to have engaged in forum shopping if all of them, acting as one group, filed identical special civil actions in the Court of Appeals and in this Court. There must be identity of parties or interests represented, rights asserted and relief sought in different tribunals. In the case at bar, *two groups of private respondents appear to have acted independently of each other when they sought relief from the appellate court. Both groups sought relief from the same tribunal.*
>
> "It would not matter even if there are several divisions in the Court of Appeals. The adverse party can always ask for the consolidation of the two cases. x xx"
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> In the case at bar, private respondents represent different groups with different interests - the minority stockholders' group, represented by private respondent Lim; the unsecured creditors group, Allied Leasing & Finance Corporation; and the old management group. Each group has distinct rights to protect. In line with our ruling in *Ramos*, the cases filed by private respondents should be consolidated. In fact, BENHAR and RUBY did just that - in their urgent motions filed on December 1, 1993 and December 6, 1993, respectively, they prayed for the consolidation of the cases before the Court of Appeals.[49]

In any case, this Court resolves to condone any procedural lapse in the interest of substantial justice given the nature of business of respondent and its overreaching implication to society. To deny this Court of its duty to resolve the substantive issues would be tantamount to judicial tragedy as planholders, like petitioner herein, would be placed in a state of limbo as to its remedies under existing laws and jurisprudence.

Indeed, where strong considerations of substantive justice are manifest in the petition, the strict application of the rules of procedure may be relaxed, in the exercise of its equity jurisdiction.[50] Thus, a rigid application of the rules of procedure will not be entertained if it will only obstruct rather than serve the broader interests of justice in the light of the prevailing circumstances in the case under consideration.[51] It is a prerogative duly embedded in jurisprudence, as in *Alcantara v. Philippine*

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49 *Id.* at 495-496.

50 *CMTC International Marketing Corporation v. Bhagis International Trading Corporation*, G.R. No. 170488, December 10, 2012, 687 SCRA 469, 475.

51 *Id.* at 475-476.

Commercial and International Bank,[52] where the Court had the occasion to reiterate that:

> x x x In appropriate cases, the courts may liberally construe procedural rules in order to meet and advance the cause of substantial justice. Lapses in the literal observation of a procedural rule will be overlooked when they do not involve public policy, when they arose from an honest mistake or unforeseen accident, and when they have not prejudiced the adverse party or deprived the court of its authority. The aforementioned conditions are present in the case at bar.
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> x x x x
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> There is ample jurisprudence holding that the subsequent and substantial compliance of an appellant may call for the relaxation of the rules of procedure. In these cases, we ruled that the subsequent submission of the missing documents with the motion for reconsideration amounts to substantial compliance. The reasons behind the failure of the petitioners in these two cases to comply with the required attachments were no longer scrutinized. What we found noteworthy in each case was the fact that the petitioners therein substantially complied with the formal requirements. We ordered the remand of the petitions in these cases to the Court of Appeals, stressing the ruling that by precipitately dismissing the petitions "the appellate court clearly put a premium on technicalities at the expense of a just resolution of the case."
>
> While it is true that the rules of procedure are intended to promote rather than frustrate the ends of justice, and the swift unclogging of court docket is a laudable objective, it nevertheless must not be met at the expense of substantial justice. This Court has time and again reiterated the doctrine that the rules of procedure are mere tools aimed at facilitating the attainment of justice, rather than its frustration. A strict and rigid application of the rules must always be eschewed when it would subvert the primary objective of the rules, that is, to enhance fair trials and expedite justice. Technicalities should never be used to defeat the substantive rights of the other party. Every party-litigant must be afforded the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities. Considering that there was substantial compliance, a liberal interpretation of procedural rules in this labor case is more in keeping with the constitutional mandate to secure social justice.[53]

Notwithstanding our liberal interpretation of the rules, the instant petition must fail on substantive grounds.

Petitioner contends that the MRP is *ultra vires* insofar as it reduces the original claim and even the original amount that petitioner was to receive under the ARP.[54] She also claims that it was beyond the authority of the

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52 G.R. No. 151349, October 20, 2010, 634 SCRA 48.
53 *Id.* at 59-61.
54 *Rollo*, p. 54.

Rehabilitation Court to sanction a rehabilitation plan, or the modification thereof, when the essential feature of the plan involves forcing creditors to reduce their claims against respondent.[55]

Petitioner's argument is misplaced. The "cram-down" power of the Rehabilitation Court has long been established and even codified under Section 23, Rule 4 of the Interim Rules, to wit:

> Section 23. *Approval of the Rehabilitation Plan.* – The court may approve a rehabilitation plan over the opposition of creditors, holding a majority of the total liabilities of the debtor if, in its judgment, the rehabilitation of the debtor is feasible and the opposition of the creditors is manifestly unreasonable.

Such prerogative was carried over in the Rehabilitation Rules, which maintains that the court may approve a rehabilitation plan over the objection of the creditors if, in its judgment, the rehabilitation of the debtors is feasible and the opposition of the creditors is manifestly unreasonable. The required number of creditors opposing such plan under the Interim Rules (*i.e.*, those holding the majority of the total liabilities of the debtor) was, in fact, removed. Moreover, the criteria for manifest unreasonableness is spelled out, to wit:

> **SEC. 11.** *Approval of Rehabilitation Plan*. — The court may approve a rehabilitation plan even over the opposition of creditors of the debtor if, in its judgment, the rehabilitation of the debtor is feasible and the opposition of the creditors is manifestly unreasonable. The opposition of the creditors is manifestly unreasonable if the following are present:
>
> (a) The rehabilitation plan complies with the requirements specified in Section 18 of Rule 3;[56]
>
> (b) The rehabilitation plan would provide the objecting class of creditors with payments whose present value projected in the plan would be greater than that which they would have received if the assets of the debtor were

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55 *Id.*

56 Section 18, Rule 3 of the Rehabilitation Rules provides that:

SEC. 18. *Rehabilitation Plan*. — The rehabilitation plan shall include (a) the desired business targets or goals and the duration and coverage of the rehabilitation; (b) the terms and conditions of such rehabilitation which shall include the manner of its implementation, giving due regard to the interests of secured creditors such as, but not limited, to the non-impairment of their security liens or interests; (c) the material financial commitments to support the rehabilitation plan; (d) the means for the execution of the rehabilitation plan, which may include debt to equity conversion, restructuring of the debts, *dacion en pago* or sale or exchange or any disposition of assets or of the interest of shareholders, partners or members; (e) a liquidation analysis setting out for each creditor that the present value of payments it would receive under the plan is more than that which it would receive if the assets of the debtor were sold by a liquidator within a six-month period from the estimated date of filing of the petition; and (f) such other relevant information to enable a reasonable investor to make an informed decision on the feasibility of the rehabilitation plan.

> sold by a liquidator within a six (6)month period from the date of filing of the petition; and
>
> (c) ***The rehabilitation receiver has recommended approval of the plan***.
>
> In approving the rehabilitation plan, the court shall ensure that the rights of the secured creditors are not impaired. The court shall also issue the necessary orders or processes for its immediate and successful implementation. It may impose such terms, conditions, or restrictions as the effective implementation and monitoring thereof may reasonably require, or for the protection and preservation of the interests of the creditors should the plan fail.[57]

This legal precept is not novel and has, in fact, been reinforced in recent decisions such as in *Bank of the Philippine Islands v. Sarabia Manor Hotel Corporation*,[58] where the Court elucidated the rationale behind Section 23, Rule 4 of the Interim Rules, thus:

> Among other rules that foster the foregoing policies, Section 23, Rule 4 of the Interim Rules of Procedure on Corporate Rehabilitation (Interim Rules) states that ***a rehabilitation plan may be approved even over the opposition of the creditors holding a majority of the corporation's total liabilities if there is a showing that rehabilitation is feasible and the opposition of the creditors is manifestly unreasonable***. Also known as the "cram-down" clause, this provision, which is currently incorporated in the FRIA, is necessary to curb the majority creditors' natural tendency to dictate their own terms and conditions to the rehabilitation, absent due regard to the greater long-term benefit of all stakeholders. Otherwise stated, it forces the creditors to accept the terms and conditions of the rehabilitation plan, preferring long-term viability over immediate but incomplete recovery.[59]

as well as in *Pryce Corporation v. China Banking Corporation*,[60] to wit:

> In any case, ***the Interim Rules or the rules in effect at the time the petition for corporate rehabilitation was filed in 2004 adopts the cram-down principle which "consists of two things: (i) approval despite opposition and (ii) binding effect of the approved plan x x x."***
>
> *First*, the Interim Rules allows the rehabilitation court to "approve a rehabilitation plan even over the opposition of creditors holding a majority of the total liabilities of the debtor if, in its judgment, the rehabilitation of the debtor is feasible and the opposition of the creditors is manifestly unreasonable."

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57 Emphasis supplied.
58 G.R. No. 175844, July 29, 2013, 702 SCRA 432.
59 *Id.* at 447. (Emphasis in the original)
60 G.R. No. 172302, February 18, 2014, 716 SCRA 207.

> *Second*, it also provides that upon approval by the court, the rehabilitation plan and its provisions "shall be binding upon the debtor and all persons who may be affected by it, including the creditors, whether or not such persons have participated in the proceedings or opposed the plan or whether or not their claims have been scheduled."
>
> Thus, the January 17, 2005 order approving the amended rehabilitation plan, now final and executory resulting from the resolution of *BPI v. Pryce Corporation* docketed as G.R. No. 180316, binds all creditors including respondent China Banking Corporation.[61]

Based on the aforequoted doctrines, petitioner's outright censure of the concept of the cram-down power of the rehabilitation court cannot be countenanced. To adhere to the reasoning of petitioner would be a step backward — a futile attempt to address an outdated set of challenges. It is undeniable that there is a need to move to a regime of modern restructuring, cram-down and court supervision in the matter of corporation rehabilitation in order to address the greater interest of the public. This is clearly manifested in Section 64 of Republic Act (*R.A.)* No. 10142, otherwise known as Financial Rehabilitation and Insolvency Act of 2010 (*FRIA*), the latest law on corporate rehabilitation and insolvency, thus:

> **Section 64.** *Creditor Approval of Rehabilitation Plan.* – The rehabilitation receiver shall notify the creditors and stakeholders that the Plan is ready for their examination. Within twenty (2Q) days from the said notification, the rehabilitation receiver shall convene the creditors, either as a whole or per class, for purposes of voting on the approval of the Plan. The Plan shall be deemed rejected unless approved by all classes of creditors w hose rights are adversely modified or affected by the Plan. For purposes of this section, the Plan is deemed to have been approved by a class of creditors if members of the said class holding more than fifty percent (50%) of the total claims of the said class vote in favor of the Plan. The votes of the creditors shall be based solely on the amount of their respective claims based on the registry of claims submitted by the rehabilitation receiver pursuant to Section 44 hereof.
>
> ***Notwithstanding the rejection of the Rehabilitation Plan, the court may confirm the Rehabilitation Plan if all of the following circumstances are present:***
>
> ***(a)The Rehabilitation Plan complies with the requirements specified in this Act;***
>
> ***(b) The rehabilitation receiver recommends the confirmation of the Rehabilitation Plan;***
>
> ***(c) The shareholders, owners or partners of the juridical debtor lose at least their controlling interest as a result of the Rehabilitation Plan; and***
>
> ***(d) The Rehabilitation Plan would likely provide the objecting class of creditors with compensation which has a net present value***

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61 *Id.* at 220-221. (Emphasis supplied)

> ***greater than that which they would have received if the debtor were under liquidation.***[62]

While the voice and participation of the creditors is crucial in the determination of the viability of the rehabilitation plan, as they stand to benefit or suffer in the implementation thereof, the interests of all stakeholders is the ultimate and prime consideration. Thus, while we recognize the predisposition of the planholders in vacillating on the enforcement of the MRP, since the terms and conditions stated therein have been fundamentally changed from those stated in the Original and Amended Rehabilitation Plan, the MRP cannot be considered an abrogation of rights to the planholders/creditors.

First. An examination of the changes proposed in the MRP would confirm that the same is, in fact, an effective risk management tool intended to serve both the interests of respondent and its planholders/creditors.

It is a matter of fact and record that the Philippine Peso unexpectedly and uncharacteristically strengthened and appreciated from Fifty-Two and 02/100 Pesos (Php52.02) to One U.S. Dollar (USD1.00) at the time of the approval of the ARP to Forty and (63)/100 Pesos (Php40.63) to One U.S. Dollar (USD1.00) as of March 7, 2008, the day the Rehabilitation Receiver filed his Manifestation with Motion to Admit praying for the approval of the MRP.[63] There is no gainsaying that during this period, the value of the U.S. Dollar-denominated NAPOCOR bonds — the assets covering the trust fund subject of the traditional education plan — has already been substantially diluted because of the stronger value of the Philippine Peso *vis-à-vis* the U.S. Dollar from the time of the approval of the ARP.[64] As succinctly held by the RTC in its Resolution dated July 28, 2008, to wit:

> First, there is in tr[u]th no quibble that the Philippine Peso has behaved in an uncharacteristic manner by appreciating significantly vis-à-vis the United States Dollar. This fact is not disputed by any of the parties. Further, the Court takes cognizance that at the time the Alternative Rehabilitation Plan was approved on 27 April 2006, the exchange rate was Php52.02/US$1.00. As of 15 July 2008, the exchange rate was Php45.35/US$1.00, or an appreciation of at least fourteen percent (14%). Since the NAPOCOR Bonds are denominated in United States dollars, it means that the NAPOCOR Bonds have lost their original value by at least fourteen percent (14%) since the approval of the Alternative Rehabilitation Plan on 27 April 2006. Ergo, the continued payment of tuition support in Philippine Pesos will lead to the certainty of the trust

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62 Emphasis supplied.
63 Comment to Petition, *rollo*, pp, 523-524.
64 *Id.* at 524.

> fund being substantially diluted when the planholders avail of the same upon maturity of the NAPOCOR Bonds in 2010.[65]

This defense mechanism is reasonable because sustaining the current terms of the ARP would render the trust fund of no value given the high probability of its dilution. Resultantly, the very foundation of the rehabilitation plan, which is to minimize the loss of all stakeholders, would be rendered in futile since the trust funds may no longer be sufficient to meet the basic terms of the ARP.

In addition, the MRP merely establishes the planholders' claim on a percentage/pro rata share of the assets of the trust fund. It does not, in any way, diminish the value of their claims or their share in the proverbial pie. The propriety of this theory was recognized by the Rehabilitation Court, to wit:

> *Second*, the conversion of the Philippine Peso entitlements into United States Dollar entitlements would not diminish the pro rata share of the planholders. Each planholder would still receive his proportionate share of the pie, so to speak, albeit in United States Dollars. The said conversion would merely ensure that regardless of the performance of the Philippine Pesos, planholders of petitioner PPI are guaranteed payment upon maturity of the NAPOCOR Bonds, without fear that their share will be substantially diluted. In fact, the planholders may even benefit from this modification in the rehabilitation plan if the United States dollars appreciates in 2010.[66]

As can be gleaned from the foregoing, the modification guarantees that each planholder has an adequate return on his/her investment regardless of changes in the surge of the Philippine economy.[67]

We, therefore, agree with respondent that the proposed modification seeks to establish a balance between adequate returns to the planholders/creditors, while ensuring that respondent shall be an on-going concern that can eventually undergo normal operations after the implementation of the MRP.[68]

Second. The recommendation of the Rehabilitation Receiver cannot simply be unsung without violating the basic tenet of Section 14, Rule 4 of the Interim Rules, which provides the powers and functions of the Rehabilitation Receiver, thus:

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65 Resolution of the RTC dated July 28, 2008, *rollo*, p. 592.
66 *Id.* at 592-593.
67 Comment to Petition, *rollo*, p. 527.
68 *Id.* at 524.

> **Sec. 14.** *Powers and Functions of the Rehabilitation Receiver*. - The Rehabilitation Receiver shall not take over the management and control of the debtor but shall ***closely oversee and monitor the operations of the debtor during the pendency of the proceedings***, and for this purpose shall have the powers, duties and functions of a receiver under Presidential Decree No. 902-A, as amended, and the Rules of Court.
>
> x x x Accordingly, he shall have the following powers and functions:
>
> x x x x
>
> (j) To monitor the operations of the debtor and to immediately report to the court any material adverse change in the debtor's business;
>
> x x x x
>
> (l) To determine and recommend to the court the best way to salvage and protect the interests of the creditors, stockholders, and the general public;
>
> x x x x
>
> (v) ***To recommend any modification of an approved rehabilitation plan as he may deem appropriate***;
>
> (w) To bring to the attention of the court any material change affecting the debtor's ability to meet the obligations under the rehabilitation plan;
>
> x x x.[69]

As correctly recognized by the Rehabilitation Court in its Resolution dated July 28, 2008, the Rehabilitation Receiver has the duty and authority to recommend any modification of an approved rehabilitation plan as he may deem appropriate and for the purpose of achieving the desired targets or goals set forth therein, thus:

> It is the strenuous proposition of the CARR that under the Interim Rules, he has the duty to recommend any modification of an approved rehabilitation plan as he may been appropriate. *Ex concesso*, the Court recognizes that under Rule 4, Section 26 of the Interim Rules, an approved rehabilitation plan may be modified if, in the judgment of the Court, such modification is necessary to achieve the desired targets or goals set forth therein.[70]

The Rehabilitation Rules allow the modification and alteration of the rehabilitation plan precisely because of conditions that may supervene or

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69 Emphasis supplied.

70 *Supra* note 65, at 591-592.

affect the implementation thereof subsequent to its approval. In the case at bar, to force through with the tuition support would surely jeopardize the implementation of the ARP in the long-run since it would not be feasible to keep on liquidating the NAPOCOR Bonds.

Third. We confirm that there is a substantial likelihood for respondent to be successfully rehabilitated considering that its business remains viable and is operating on a going-concern premise.

A careful reading of the records will show that respondent's liquidity problems were mostly caused by the deregulation of the education sector, which triggered sharp increases in tuition fees of schools and universities beyond what was projected by pre-need companies dealing with traditional educational plans. Surely, we are mindful of the financial distress in 1997, which has destroyed various institutions not only in the Philippines but across Asia, further compromising the pre-need industry's ability to meet its obligations under the PEPTrads. The surrounding circumstances of the time was peculiar and may no longer be pertinent at present.

Thus, pointing fingers to respondent at this point for its alleged mismanagement of assets would be irrational, and even counter-productive, because the feasibility of respondent's rehabilitation has already been duly established by the Rehabilitation Court. A subsequent allegation to the contrary has no leg to stand on. Conversely, by virtue of the corporate rehabilitation, respondent will have enough breathing room to improve its operations in order to sustain its business operations and at the same time, settle all its outstanding obligations in a just and fair manner, in accordance with the MRP. In this regard, We find reason in respondent's contention that the MRP will not only be beneficial to itself, but also to its planholders and creditors as well.

Anent petitioner's argument that the approval of the MRP is offensive to the non-impairment clause of the Constitution, the same fails to persuade.

Petitioner's interpretation of Section 37 of the Rehabilitation Rules *vis-à-vis* the means within which a rehabilitation plan may be pursued, is misplaced. As held in a plethora of cases, a rehabilitation plan may involve a reduction of liability. On this score, the principle enunciated in *Pacific Wide Realty and Development Corporation v. Puerto Azul Land, Inc.*,[71] is instructive, thus –

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[71] 620 Phil. 520 (2009).

> The restructuring of the debts of PALI is part and parcel of its rehabilitation. Moreover, per findings of fact of the RTC and as affirmed by the CA, the restructuring of the debts of PALI would not be prejudicial to the interest of PWRDC as a secured creditor. Enlightening is the observation of the CA in this regard, *viz*.:
>
> > There is nothing unreasonable or onerous about the 50% reduction of the principal amount when, as found by the court *a quo*, a Special Purpose Vehicle (SPV) acquired the credits of PALI from its creditors at deep discounts of as much as 85%. Meaning, PALI's creditors accepted only 15% of their credit's value. Stated otherwise, if PALI's creditors are in a position to accept 15% of their credit's value, with more reason that they should be able to accept 50% thereof as full settlement by their debtor. x x x.[72]

Here, petitioner's claim is not cancelled or obliterated all together. Contrary to her view, petitioner's claim is in fact restructured in a way that would allow respondent to revive its financial health while offering the optimal returns to its clients.

It is undisputable that the corporation is in the process of corporate rehabilitation precisely because it is undergoing financial distress. Petitioner cannot expect to receive the contracted amount owed by respondent because a modification of the terms and conditions of the contract is certainly foreseeable and reasonable in a corporate rehabilitation case, as correctly held by the Rehabilitation Court, to wit:

> x x x It is an established principle in rehabilitation proceedings that rehabilitation courts have the cram down power to approve rehabilitation plans even over the objections of creditors, which cram down power shall nonetheless bind the latter. In fact, the CARR is given the authority to "notify counterparties and the court as to contracts that the debtor has decided to continue to perform or breach." A fortiori, the mere impairment of contracts is not a justification to question the modification of a rehabilitation plan ***because the very nature of rehabilitation proceedings sometimes necessitates such a course of action***.[73]

Indeed, the rights of petitioner arising from the contracts it entered with respondent are not in any way weakened by the approval of the ARP, and then the MRP, despite any reduction in the amount of the obligation due to petitioner. As enunciated in *Pacific Wide*,[74] the reduction of the debt of the debtor is one of the essential features of a rehabilitation case, and is not considered prejudicial to the interest of a secured creditor, thus:

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72 *Id.* at 532-533.
73 *Supra* note 65, at 593-594. (Emphasis supplied)
74 *Supra* note 71.

> We find nothing onerous in the terms of PALI's rehabilitation plan. The Interim Rules on Corporate Rehabilitation provides for means of execution of the rehabilitation plan, which may include, among others, the conversion of the debts or any portion thereof to equity, restructuring of the debts, *dacion en pago*, or sale of assets or of the controlling interest.
>
> The restructuring of the debts of PALI is part and parcel of its rehabilitation. Moreover, per findings of fact of the RTC and as affirmed by the CA, the restructuring of the debts of PALI would not be prejudicial to the interest of PWRDC as a secured creditor. Enlightening is the observation of the CA in this regard, viz.:
>
> > There is nothing unreasonable or onerous about the 50% reduction of the principal amount when, as found by the court a quo, a Special Purpose Vehicle (SPV) acquired the credits of PALI from its creditors at deep discounts of as much as 85%. Meaning, PALI's creditors accepted only 15% of their credit's value. Stated otherwise, if PALI's creditors are in a position to accept 15% of their credit's value, with more reason that they should be able to accept 50% thereof as full settlement by their debtor. x xx.
>
> We also find no merit in PWRDC's contention that there is a violation of the impairment clause. Section 10, Article III of the Constitution mandates that no law impairing the obligations of contract shall be passed. ***This case does not involve a law or an executive issuance declaring the modification of the contract among debtor PALI, its creditors and its accommodation mortgagors. Thus, the non-impairment clause may not be invoked***. Furthermore, as held in *Oposa v. Factoran, Jr*. even assuming that the same may be invoked, the non-impairment clause must yield to the police power of the State. Property rights and contractual rights are not absolute. The constitutional guaranty of non-impairment of obligations is limited by the exercise of the police power of the State for the common good of the general public.
>
> ***Successful rehabilitation of a distressed corporation will benefit its debtors, creditors, employees, and the economy in general. The court may approve a rehabilitation plan even over the opposition of creditors holding a majority of the total liabilities of the debtor if, in its judgment, the rehabilitation of the debtor is feasible and the opposition of the creditors is manifestly unreasonable***. The rehabilitation plan, once approved, is binding upon the debtor and all persons who may be affected by it, including the creditors, whether or not such persons have participated in the proceedings or have opposed the plan or whether or not their claims have been scheduled.[75]

Similarly, the reasoning laid down by the CA for the application of the cram-down power of the Rehabilitation Court is enlightening, thus:

> This Court likewise rejects petitioner Aquino's claims that the Modified Rehabilitation Plan constitutes an impairment of contracts. The

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75 *Id.* at 533. (Emphasis supplied)

> non-impairment clause under the Constitution applies only to the exercise of legislative power. It does not apply to the Rehabilitation Court which exercises judicial power over the rehabilitation proceedings. As held by the Supreme Court in Bank of the Philippine Islands vs. Securities and Exchange Commission, [G.R. No. 164641, December 20, 2007:
>
> > "The Court reiterates that the SEC's approval of the Rehabilitation Plan did not impair BPI's right to contract. As correctly contended by private respondents, the non-impairment clause is a limit on the exercise of legislative power and not of judicial or quasi-judicial power. The SEC, through the hearing panel that heard the petition for approval of the Rehabilitation Plan, was acting as a quasi-judicial body and thus, its order approving the plan cannot constitute an impairment of the right and the freedom to contract."[76]

In view of all of the foregoing, We find no basis to overturn the findings of the CA with respect to the substantive issues in this case. Accordingly, the prayer for the issuance of a TRO and/or a writ of preliminary injunction must necessarily fail.

A final note. The evolving times of corporate rehabilitation, owing to the rise and fall of economic activity over time, calls on the Judiciary to take an active role in filling in the gaps of the law pertaining to this issue as the inimitable factual milieu of each case would require a different approach in the application of prevailing laws, rules and regulations on corporate rehabilitation.

In the case at bar, we hold that the modification of the rehabilitation plan is a risk management tool to address the volatility of the exchange rate of the Philippine Peso *vis-à-vis* the U.S. Dollars, with the goal of ensuring that all planholders or creditors receive adequate returns regardless of the tides of the Philippine market by making payment in U.S. Dollars. This plan would prevent the trust fund of respondent from being diluted due to the appreciation of the Philippine Peso and assure that all planholders and creditors shall receive payment upon maturity of the NAPOCOR bonds in the most equitable manner.

WHEREFORE, the petition is **DENIED**. The February 26, 2010 Decision and July 21, 2010 Resolution of the Court of Appeals in CA-G.R. SP No. 105237 are hereby **AFFIRMED**.

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[76] *Supra* note 1, at 83.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

BIENVENIDO L. REYES
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice