



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

**COSMOS
CORPORATION,**

BOTTLING

G.R. No. 199028

Petitioner,

Present:

- versus -

VELASCO, JR.,
LEONARDO-DE CASTRO,
Acting Chairperson,**
DEL CASTILLO,***
PEREZ, and
PERLAS-BERNABE, JJ.

**COMMISSION *EN BANC* of the
SECURITIES AND
EXCHANGE COMMISSION
(SEC) and JUSTINA F.
CALLANGAN, in her capacity
as Director of the Corporation
Finance Department of the SEC,
Respondents.**

Promulgated:

NOV 12 2014

X-----X

DECISION

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*¹ are the Decision² dated April 25, 2011 and the Resolution³ dated October 17, 2011 of the Court of Appeals (CA) in CA-G.R. SP. No. 110714 affirming the Decision⁴ dated September 10, 2009 of respondent the Securities and Exchange Commission (SEC) *En Banc* in SEC *En Banc* Case No. 04-08-129 which dismissed petitioner Cosmos Bottling Corporation's (Cosmos) appeal on the ground that it was treated as a prohibited motion for reconsideration. Thus, the Order of Revocation⁵ (Revocation Order) dated March 19, 2008 of the

* Designated Acting Member per Special Order No. 1870 dated November 4, 2014.

** Per Special Order No. 1861 dated November 4, 2014.

*** Designated Acting Member per Special Order No. 1862 dated November 4, 2014.

¹ *Rollo*, pp. 10-84.

² Id. at 88-106. Penned by Associate Justice Priscilla J. Baltazar-Padilla with Associate Justices Fernanda Lampas Peralta and Agnes Reyes-Carpio, concurring.

³ Id. at 148-149.

⁴ Id. at 483-487. Signed by Chairperson Fe B. Barin and Commissioners Ma. Juanita E. Cueto, Raul J. Palabrica, and Thaddeus E. Venturanza. Commissioner Manuel Huberto B. Gaité was on vacation leave.

⁵ Id. at 392-393. Signed by Director Justina F. Callangan.

N

SEC-Corporation Finance Department (SEC-CFD) revoking Cosmos's Registration of Securities/Permit to Sell Securities to the Public (Subject Registration/Permit) was deemed to have lapsed into finality.

The Facts

The instant case stemmed from Cosmos's failure to submit its 2005 Annual Report to the SEC within the prescribed period. In connection therewith, it requested an extension of time within which to file the same.⁶ In response, the SEC-CFD, through respondent Director Justina F. Callangan (Director Callangan), sent Cosmos a letter⁷ dated May 18, 2006 denying the latter's request and directing it to submit its 2005 Annual Report. The same letter also ordered Cosmos to show cause why the Subject Registration/Permit should not be revoked for violating Section 17.1 (a)⁸ of Republic Act No. 8799, otherwise known as "The Securities Regulation Code" (SRC).⁹

On May 31, 2006, Cosmos sent a reply-letter¹⁰ to the SEC-CFD, explaining that its failure to file its 2005 Annual Report was due to the non-completion by its external auditors of their audit procedures. For this reason, Cosmos implored the SEC-CFD to reconsider its previous denial of Cosmos's request for additional time to file its 2005 Annual Report.¹¹ Thereafter, hearings for the suspension of the Subject Registration/Permit commenced, with Cosmos advancing the same reasons for the non-submission of its 2005 Annual Report in its May 31, 2006 letter to the SEC-CFD.¹²

The SEC-CFD Proceedings

In an Order¹³ dated May 8, 2007, the SEC-CFD ordered the suspension of the Subject Registration/Permit (suspension order) for a period

⁶ Id. at 89-91.

⁷ Id. at 796.

⁸ Section 17.1 (a) of the SRC reads:

SEC. 17. *Periodic and Other Reports of Issuers.*

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

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

x x x x

⁹ *Rollo*, p. 89.

¹⁰ Id. at 797.

¹¹ Id. at 90.

¹² Id. at 90-91.

¹³ Id. at 160.

of 60 days from receipt of the same, or until Cosmos files its 2005 Annual Report, whichever is earlier. The SEC-CFD also stated that Cosmos's failure to submit its 2005 Annual Report within the 60-day period shall constrain the SEC to initiate proceedings for revocation of the Subject Registration/Permit.¹⁴

After the lapse of the aforesaid period, Cosmos still failed to comply with the SEC's directives. Thus, the revocation proceedings commenced on August 22, 2007.¹⁵ On August 24, 2007, Cosmos submitted its formal explanation,¹⁶ reiterating that the delay in submitting its 2005 Annual Report, as well as its 2006 Annual Report, is occasioned by the following factors: (a) non-completion of its 2005 Audited Financial Statements by its external auditor; (b) the adoption of new accounting standards which gave rise to additional disclosures in the financial reports; and (c) the sale of Coca-Cola Bottlers Philippines, Inc., which is the parent company of Cosmos, to Coca-Cola South Asia Holdings, Inc.¹⁷ These notwithstanding, Cosmos undertook to submit its 2005 and 2006 Annual Reports not later than October 31, 2007, or as soon as they are duly accomplished, and to pay all the corresponding penalties. Lastly, Cosmos also requested the SEC-CFD to abandon the pending revocation proceedings.¹⁸

On October 31, 2007, Cosmos finally submitted its 2005 and 2006 Annual Reports to the SEC.¹⁹ In connection therewith, Cosmos sent a letter²⁰ dated January 24, 2008 to the SEC-CFD, requesting that the latter lift the suspension order and abandon the revocation proceedings against the former.²¹ The SEC-CFD referred the matter to the SEC *En Banc* for its consideration in its March 13, 2008 meeting.²² After the said meeting, the SEC *En Banc* issued Resolution No. 87, series of (s.) 2008²³ wherein they resolved to: (a) deny Cosmos's request for the lifting of the suspension order; and (b) revoke the Subject Registration/Permit.²⁴ On the basis thereof, the SEC-CFD issued a Revocation Order echoing the pronouncements indicated in the aforesaid resolution.

Dissatisfied, Cosmos appealed to the SEC *En Banc*.²⁵

¹⁴ See *id.* at 91-92.

¹⁵ *Id.* at 94. See also *id.* at 177-A.

¹⁶ *Id.* at 179-180.

¹⁷ *Id.* at 179.

¹⁸ *Id.* at 180.

¹⁹ *Id.* at 95.

²⁰ *Id.* at 387.

²¹ *Id.* at 95.

²² *Id.*

²³ Resolution No. 88, s. 2008 in some parts of the record. See SEC *En Banc*'s September 10, 2009 Decision; *id.* at 483-484. See also CA's April 25, 2011 Decision; *id.* at 95-96.

²⁴ *Id.*

²⁵ See Notice of Appeal and Memorandum of Appeal, both dated April 3, 2008; *id.* at 395-429.

The SEC *En Banc* Ruling

In a Decision²⁶ dated September 10, 2009, the SEC *En Banc* dismissed Cosmos's appeal.²⁷ It held that the Revocation Order was a mere articulation of the SEC *En Banc*'s Resolution No. 87, s. 2008, and thus, should be considered an issuance of the SEC *En Banc* itself. The SEC *En Banc* thus deemed Cosmos's appeal as a motion for reconsideration, a prohibited pleading under Section 3-6, Rule III of the 2006 SEC Rules of Procedure,²⁸ and was accordingly expunged from the records of the case.²⁹

Aggrieved, Cosmos filed a petition for review before the CA.³⁰

The CA Ruling

In a Decision³¹ dated April 25, 2011, the CA affirmed the SEC *En Banc* Ruling. It held that the SEC-CFD merely acted as an arm of the SEC *En Banc* when it issued the Revocation Order against Cosmos, considering that it was simply a reiteration of Resolution No. 87, s. 2008 which emanated from the SEC *En Banc* itself. As such, Cosmos's appeal before the SEC *En Banc* assailing the Revocation Order was properly deemed as a motion for reconsideration, since it is tantamount to a request for the SEC *En Banc* to review or reconsider its own judgment.³² Hence, the SEC *En Banc* correctly dismissed Cosmos's appeal.

Further, the CA held that Cosmos's appeal, which was treated as a prohibited motion for reconsideration under the 2006 SEC Rules of Procedure, did not toll the reglementary period for filing an appeal before it. As such, the SEC *En Banc*'s Ruling, as well as the Revocation Order, had already lapsed into finality and could no longer be disturbed.³³

²⁶ Id. at 483-487.

²⁷ Id. at 486.

²⁸ Section 3-6 of the 2006 SEC Rules of Procedure reads:

SEC. 3-6. Prohibited Pleadings. – The following pleadings or any submission that is filed or made under a similar guise or title shall not be allowed:

x x x x

(c) Motion for New Trial, Reconsideration of Judgment or Order, or Reopening of Trial;

x x x x

Should one be filed, said prohibited pleadings or submissions shall be automatically expunged from the records of the case.

x x x x

²⁹ See *rollo*, p. 486.

³⁰ See Petition for Review dated October 14, 2009; id. at 495-534.

³¹ Id. at 88-106.

³² Id. at 102-103.

³³ Id. at 104-105.

Cosmos moved for reconsideration,³⁴ which was, however, denied in a Resolution³⁵ dated October 17, 2011, hence, this petition.

The Issue Before the Court

The primordial issue for the Court's resolution is whether or not the CA correctly treated Cosmos's appeal before the SEC *En Banc* as a motion for reconsideration, and consequently, affirmed its dismissal for being a prohibited pleading under the 2006 SEC Rules of Procedure.

The Court's Ruling

The petition is meritorious.

As an administrative agency with both regulatory and adjudicatory functions,³⁶ the SEC was given the authority to delegate some of its functions to, *inter alia*, its various operating departments, such as the SEC-CFD, the Enforcement and Investor Protection Department, and the Company Registration and Monitoring Department, pursuant to Section 4.6 of the SRC, to wit:

SEC. 4. *Administrative Agency.*

x x x x

- 4.6. The **Commission may, for purposes of efficiency, delegate any of its functions to any department** or office of the Commission, an individual Commissioner or staff member of the Commission except its review or appellate authority and its power to adopt, alter and supplement any rule or regulation.

The Commission may review upon its own initiative or upon the petition of any interested party any action of any department or office, individual Commissioner, or staff member or the Commission. (Emphasis and underscoring supplied)

Naturally, the aforesaid provision also gives the SEC the power to review the acts performed by its operating departments in the exercise of the former's delegated functions. This power of review is squarely addressed by Section 11-1, Rule XI of the 2006 SEC Rules of Procedure, which provides that "[a]n appeal to the Commission *En Banc* may be taken from a decision,

³⁴ See Motion for Reconsideration dated May 18, 2011; *id.* at 108-145.

³⁵ *Id.* at 148-149.

³⁶ See *Calma v. CA*, 362 Phil. 297, 301 (1999), citing *SEC v. CA*, 316 Phil. 903, 906 (1995).

order, or resolution issued by an Operating Department if there are questions of fact, of law, or mixed questions of fact and law.”

In this case, the Court disagrees with the findings of both the SEC *En Banc* and the CA that the Revocation Order emanated from the SEC *En Banc*. Rather, such Order was merely issued by the SEC-CFD as one of the SEC’s operating departments, as evidenced by the following: (a) it was printed and issued on the letterhead of the SEC-CFD, and not the SEC *En Banc*; (b) it was docketed as a case under the SEC-CFD as an operating department of the SEC, since it bore the serial number “SEC-CFD Order No. 027, [s.] 2008;” and (c) it was signed solely by Director Callangan as director of the SEC-CFD, and not by the commissioners of the SEC *En Banc*.

Further, both the SEC *En Banc* and the CA erred in holding that the Revocation Order merely reflected Resolution No. 87, s. 2008, and thus, should already be considered as the ruling of the SEC *En Banc* in this case. As admitted by respondents, the SEC-CFD’s referral of the case to the SEC *En Banc* for its consideration in its March 13, 2008 meeting, which eventually resulted in the issuance of Resolution No. 87, s. 2008, was merely an internal procedure inherent in the exercise by the SEC of its administrative and regulatory functions.³⁷ Moreover, Cosmos never knew of the existence of Resolution No. 87, s. 2008, as it was not furnished a copy thereof; nor did the Revocation Order make any specific reference to the same. Essentially, Cosmos was only apprised of the existence of Resolution No. 87, s. 2008 when it was finally cited by the SEC *En Banc* in its September 10, 2009 Decision.³⁸ Accordingly, when Cosmos received the Revocation Order, it had every reason to believe that it was issued by the SEC-CFD as an Operating Department of the SEC, and thus, appealable to the SEC *En Banc*. Therefore, the outright dismissal of Cosmos’s appeal by the SEC *En Banc* effectively denied it of its right to appeal, as provided for under the SRC and the 2006 SEC Rules of Procedure, and therefore could not be countenanced.

In sum, the Revocation Order is properly deemed as a decision issued by the SEC-CFD as one of the Operating Departments of the SEC, and accordingly, may be appealed to the SEC *En Banc*, as what Cosmos properly did in this case. Perforce, the SEC *En Banc* and the CA erred in deeming Cosmos’s appeal as a motion for reconsideration and ordering its dismissal on such ground. In view thereof, the Court deems it prudent to reinstate and remand the case to the SEC *En Banc* for its resolution on the merits.


WHEREFORE, the petition is **GRANTED**. Accordingly, the Decision dated April 25, 2011 and the Resolution dated October 17, 2011 of

³⁷ See *Rollo*, pp. 560-561 and 769.


³⁸ See *id.* at 47-52.


the Court of Appeals in CA-G.R. SP. No. 110714 are hereby **SET ASIDE**. The instant case is **REMANDED** to the Securities and Exchange Commission *En Banc* for resolution of Cosmos Bottling Corporation's appeal on the merits.

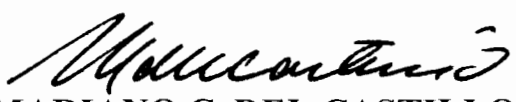
SO ORDERED.



ESTELA M. BERLAS-BERNABE
Associate Justice

WE CONCUR:


PRESBITERO J. VELASCO, JR.
Associate Justice



TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson


MARIANO C. DEL CASTILLO
Associate Justice


JOSE PORTUGAL PEREZ
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.

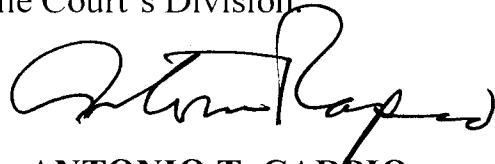

TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson, First Division

CERTIFIED TRUE COPY:

EDGAR O. ARICHETA
Division Clerk of Court
First Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Acting 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.

A handwritten signature in black ink, appearing to read 'Antonio T. Carpio', written in a cursive style.

ANTONIO T. CARPIO
Acting Chief Justice