SPECIAL THIRD DIVISION

G.R. No. 195580 – NARRA NICKEL MINING AND DEVELOPMENT CORPORATION, TESORO MINING AND DEVELOPMENT, INC., and McARTHUR MINING, INC., v. REDMONT CONSOLIDATED MINES CORPORATION

Promulgated:

January 28, 2015

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DISSENTING OPINION

LEONEN, *J.*:

I dissent from the majority's Resolution denying with finality the Motion for Reconsideration filed by petitioners. I maintain the positions I articulated in my Dissent to the April 21, 2014 Decision.

I welcome the majority's statements clarifying the relative applicability of the Grandfather Rule in relation to the Control Test. I particularly welcome the clarification that "it is only when the Control Test is *first* complied with that the Grandfather Rule may be applied."[1] This is in line with the position I articulated in my Dissent to the April 21, 2014 Decision that the Control Test should find priority in application, with the Grandfather Rule being applicable only as a "supplement."[2]

However, I maintain that the Panel of Arbitrators of the Department of Environment and Natural Resources (DENR Panel of Arbitrators) never had jurisdiction to rule on the nationalities of petitioners Narra Nickel Mining and Development Corp. (Narra), Tesoro Mining and Development, Inc. (Tesoro), and McArthur Mining, Inc. (McArthur) and on the question of whether they should be qualified to hold Mineral Production Sharing Agreements (MPSA). It is error for the majority to rule that petitioners are foreign corporations proceeding from the actions of a body which never had jurisdiction and competence to rule on the *judicial* question of nationality.

Likewise, I maintain that respondent Redmont Consolidated Mines Corp. (Redmont) engaged in blatant forum shopping. This, the lack of

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1 *Narra Nickel v. Redmont*, G.R. No. 195580, April 21, 2014, 12 [Per J. Velasco, Jr., Special Third Division Resolution].

2 J. Leonen, dissenting opinion in *Narra Nickel v. Redmont*, G.R. No. 195580, April 21, 2014, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/april2014/195580_leonen.pdf>, [Per J. Velasco, Jr., Third Division].

jurisdiction and competence of the DENR Panel of Arbitrators, and the error of proceeding from the acts of an incompetent body are sufficient grounds for granting the Petition and should suffice as bases for granting the present Motion for Reconsideration.

I

The DENR Panel of Arbitrators had no competence to rule on the Petitions filed by Redmont

The jurisdiction of the DENR Panel of Arbitrators is spelled out in Section 77 of Republic Act No. 7942, otherwise known as the Philippine Mining Act of 1995 (the "Mining Act"):

> Section 77. Panel of Arbitrators – . . . . Within thirty (30) working days, after the submission of the case by the parties for decision, the panel shall have exclusive and original jurisdiction to hear and decide on the following:
>
> (a) Disputes involving rights to mining areas;
> (b) Disputes involving mineral agreements or permit;
> (c) Disputes involving surface owners, occupants and claimholders/concessionaires; and
> (d) Disputes pending before the Bureau and the Department at the date of the effectivity of this Act.

The April 21, 2014 Decision sustained the jurisdiction of the DENR Panel of Arbitrators, relying on pronouncements made in *Celestial Nickel Mining Exploration Corporation v. Macroasia Corp.*[3] which construed the phrase "disputes involving rights to mining areas" as referring "to any adverse claim, protest, or opposition to an application for mineral agreement."[4]

However, the Decision interpreted Section 77 of the Mining Act in a manner that runs afoul of this court's pronouncements in its Decision penned by Associate Justice Dante Tinga in *Gonzales v. Climax Mining Ltd.*[5] and in its Decision penned by Associate Justice J.B.L. Reyes in *Philex Mining Corp. v. Zaldivia*.[6]

As pointed out in my Dissent to the April 21, 2014 Decision, "*Gonzales v. Climax Mining Ltd.*,[7] ruled on the jurisdiction of the Panel of

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3 565 Phil. 466 (2007) [Per J. Velasco, Jr., Second Division].
4 Id. at 499.
5 492 Phil. 682 (2005) [Per J. Tinga, Second Division].
6 150 Phil. 547 (1972) [Per J. J.B.L. Reyes, En Banc].
7 492 Phil. 682 (2005) [Per J. Tinga, Second Division].

Arbitrators as follows:"

> We now come to the meat of the case which revolves mainly around the question of jurisdiction by the Panel of Arbitrators: Does the Panel of Arbitrators have jurisdiction over the complaint for declaration of nullity and/or termination of the subject contracts on the ground of fraud, oppression and **violation of the Constitution**? This issue may be distilled into the more basic question of whether the *Complaint* raises a mining dispute or a judicial question.
>
> **A judicial question is a question that is proper for determination by the courts, as opposed to a moot question or one properly decided by the executive or legislative branch**. A judicial question is raised when the determination of the question involves the exercise of a judicial function; that is, the question involves the determination of what the law is and what the legal rights of the parties are with respect to the matter in controversy.
>
> On the other hand, a mining dispute is a dispute involving (a) rights to mining areas, (b) mineral agreements, FTAAs, or permits, and (c) surface owners, occupants and claimholders/concessionaires. Under Republic Act No. 7942 (otherwise known as the Philippine Mining Act of 1995), the Panel of Arbitrators has exclusive and original jurisdiction to hear and decide these mining disputes. The Court of Appeals, in its questioned decision, correctly stated that ***the Panel's jurisdiction is limited only to those mining disputes which raise questions of fact or matters requiring the application of technological knowledge and experience***.[8] (Emphasis supplied, citation omitted)

Philex Mining Corp. v. Zaldivia[9] settled what "questions of fact" are appropriate for resolution in a mining dispute:

> We see nothing in [S]ections 61 and 73 of the Mining Law that indicates a legislative intent to confer real judicial power upon the Director of Mines. The very terms of [S]ection 73 of the Mining Law, as amended by Republic Act No. 4388, in requiring that the adverse claim must "state *in full detail the nature, boundaries* and *extent* of the adverse claim" show that the conflicts to be decided by reason of such adverse claim refer primarily to questions of fact. This is made even clearer by the explanatory note to House Bill No. 2522, later to become Republic Act 4388, that "[S]ections 61 and 73 that refer to the overlapping of claims are amended to expedite resolutions of mining conflicts * * *." **The controversies to be submitted and resolved by the Director of Mines under the sections refer ther[e]fore only to the overlapping of claims and administrative matters incidental thereto**.[10] (Emphasis supplied)

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8 Id. at 692-693, as cited in J. Leonen, dissenting opinion in *Narra Nickel v. Redmont*, G.R. No. 195580, April 21, 2014, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/april2014/195580_leonen.pdf> 10–11 [Per J. Velasco, Jr., Third Division].

9 150 Phil. 547 (1972) [Per J. Reyes, J.B.L, En Banc].

10 Id. at 553-554, as cited in J. Leonen, dissenting opinion in *Narra Nickel v. Redmont*, G.R. No. 195580, April 21, 2014, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/april2014/195580_leonen.pdf> 11 [Per J. Velasco, Jr., Third Division].

The DENR Panel of Arbitrators, as its name denotes, is an arbitral body. It is not a court of law. Its competence rests in its capacity to resolve factual issues arising between parties with competing mining claims and requiring the application of technical expertise.

In this case, Redmont has not even shown that it has a competing mining claim. It has asked only that petitioners be declared as not qualified to enter into MPSAs.

By sustaining the jurisdiction of the DENR Panel of Arbitrators, the majority effectively diminishes (if not totally abandons) the distinction made in *Gonzales* and *Philex* between "mining disputes" and "judicial questions." Per *Gonzales* and *Philex,* judicial questions are cognizable only by courts of justice, not by the DENR Panel of Arbitrators.

The majority's reference to *Celestial* takes out of context the pronouncements made therein. To reiterate what I have stated in my Dissent to the April 21, 2014 Decision, "[t]he pronouncements in *Celestial* cited by the ponencia were made to address the assertions of Celestial Nickel and Mining Corporation (Celestial Nickel) and Blue Ridge Mineral Corporation (Blue Ridge) that the Panel of Arbitrators had the power to cancel *existing* mineral agreements pursuant to Section 77 of the Mining Act. . . . These pronouncements did not undo or abandon the distinction, clarified in *Gonzales*, between judicial questions and mining disputes."[11]

The crux of this case relates to a matter that is beyond the competence of the DENR Panel of Arbitrators. It does not pertain to the intricacies and specifications of mining operations. Rather, it pertains to the legal status of petitioners and the rights or inhibitions accruing to them on account of their status. It pertains to a judicial question.

II

On the applicability of the Grandfather Rule

I maintain the position I elucidated in my Dissent to the April 21, 2014 Decision. The Control Test, rather than the Grandfather Rule, finds priority application in reckoning the nationalities of corporations engaged in nationalized economic activities.

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[11] J. Leonen, dissenting opinion in *Narra Nickel v. Redmont*, G.R. No. 195580, April 21, 2014, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/april2014/195580_leonen.pdf> 11 [Per J. Velasco, Jr., Third Division].

The Grandfather Rule finds no basis in the text of the 1987 Constitution. It is true that the records of the Constitutional Commission "indicate an affirmative reference to the Grandfather Rule."[12] However, whatever references these records make to the Grandfather Rule is not indicative of a consensus among all members of the Constitutional Commission. At most, these references are advisory and not binding on this court.[13] Ultimately, what is controlling is the text of the Constitution itself. This text is silent on the precise means of reckoning foreign ownership.

In contrast, the Control Test is firmly enshrined by congressional dictum in a statute, specifically, Republic Act No. 8179, otherwise known as the Foreign Investments Act (FIA). As this court has pointed out, "[t]he FIA is the basic law governing foreign investments in the Philippines, irrespective of the nature of business and area of investment."[14]

Section 3 (a) of the Foreign Investments Act defines a "Philippine national" as including "a corporation organized under the laws of the Philippines of which at least sixty per cent (60%) of the capital stock outstanding and entitled to vote is owned and held by citizens of the Philippines." In my Dissent to the April 21, 2014 Decision:

> This is a definition that is consistent with the first part of paragraph 7 of the 1967 SEC Rules, which [originally articulated] the Control Test: "[s]hares belonging to corporations or partnerships at least 60 per cent of the capital of which is owned by Filipino citizens shall be considered as of Philippine nationality."[15]

The Control Test serves the rationale for nationalization of economic activities. It ensures effective control by Filipinos and satisfies the requirement of beneficial ownership.

On the matter of control, my Dissent to the April 21, 2014 Decision explained that:

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12 Id. at 34.

13 To reiterate what I stated in my dissent in *Narra Nickel v. Redmont*, G.R. No. 195580, April 21, 2014, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/april2014/195580_leonen.pdf> 36 [Per J. Velasco, Jr., Third Division]:

> In the final analysis, the records of the Constitutional Commission do not bind this court. As Charles P. Curtis, Jr. said on the role of history in constitutional exegesis:
>
> The intention of the framers of the Constitution, even assuming we could discover what it was, when it is not adequately expressed in the Constitution, that is to say, what they meant when they did not say it, surely that has no binding force upon us. If we look behind or beyond what they set down in the document, prying into what else they wrote and what they said, anything we may find is only advisory. They may sit in at our councils. There is no reason why we should eavesdrop on theirs.

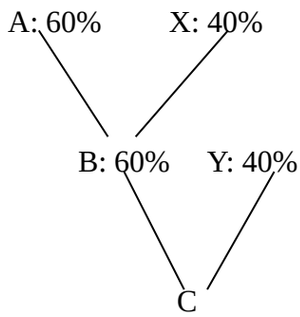
14 *Gamboa v. Teves*, G.R. No. 176579, October 9, 2012, 682 SCRA 397, 435 [Per J. Carpio, En Banc].

15 J. Leonen, dissenting opinion in *Narra Nickel v. Redmont*, G.R. No. 195580, April 21, 2014, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/april2014/195580_leonen.pdf> 37 [Per J. Velasco, Jr., Third Division].

It is a matter of transitivity[16] that if Filipino stockholders control a corporation which, in turn, controls another corporation, then the Filipino stockholders control the latter corporation, albeit indirectly or through the former corporation.

An illustration is apt.

Suppose that a corporation, "C", is engaged in a nationalized activity requiring that 60% of its capital be owned by Filipinos and that this 60% is owned by another corporation, "B", while the remaining 40% is owned by stockholders, collectively referred to as "Y". Y is composed entirely of foreign nationals. As for B, 60% of its capital is owned by stockholders collectively referred to as "A", while the remaining 40% is owned by stockholders collectively referred to as "X". The collective A, is composed entirely of Philippine nationals, while the collective X is composed entirely of foreign nationals. (N.b., in this illustration, capital is understood to mean "shares of stock entitled to vote in the election of directors," per the definition in *Gamboa*[17]). Thus:



By owning 60% of B's capital, A controls B. Likewise, by owning 60% of C's capital, B controls C. From this, it follows, as a matter of transitivity, that A controls C; albeit indirectly, that is, through B.

This "control" holds true regardless of the aggregate foreign capital in B and C. As explained in *Gamboa*, control by stockholders is a matter resting on the ability to vote in the election of directors:

> Indisputably, one of the rights of a stockholder is the right to participate in the control or management of the corporation. This is exercised through his vote in the election of directors because it is the board of directors that controls or manages the corporation.[18]

B will not be outvoted by Y in matters relating to C, while A will not be outvoted by X in matters relating to B. Since all actions taken by B must necessarily be in conformity with the will of A, anything that B does in relation to C is, in effect, in conformity with the will of A. No amount

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[16] I.e., "([o]f a relation) such that, if it applies between successive members of a sequence, it must also apply between any two members taken in order. For instance, if A is larger than B, and B is larger than C, then A is larger than C" <http://www.oxforddictionaries.com/us/definition/american_english/transitive>.

[17] *Gamboa v. Teves*, G.R. No. 176579, June 28, 2011, 652 SCRA 690, 723 and 726 [Per J. Carpio, En Banc] as cited in J. Leonen, dissenting opinion in *Narra Nickel v. Redmont*, G.R. No. 195580, April 21, 2014, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/april2014/195580_leonen.pdf> [Per J. Velasco, Jr., Third Division].

[18] Id. at 725.

> of aggregating the foreign capital in B and C will enable X to outvote A, nor Y to outvote B.
>
> *In effect*, A controls C, through B. Stated otherwise, the collective Filipinos in A, *effectively* control C, through their control of B.[19]

From the definition of "beneficial owner or beneficial ownership" provided by the Implementing Rules and Regulations (amended 2004) of Republic Act No. 8799, otherwise known as the Securities Regulation Code, "there are two (2) ways through which one may be a beneficial owner of securities, such as shares of stock: first, by having or sharing voting power; and second, by having or sharing investment returns or power."[20] The Implementing Rules use "and/or"; thus, these are alternative means which may or may not concur.

On the first — voting power — my Dissent to the April 21, 2014 Decision pointed out that:

> Voting power, as discussed previously, ultimately rests on the controlling stockholders of the controlling investor corporation. To go back to the previous illustration, voting power ultimately rests on A, it having the voting power in B which, in turn, has the voting power in C.[21]

On the second — investment returns or power — the same Dissent pointed out that:

> As to investment returns or power, it is ultimately A which enjoys investment power. It controls B's investment decisions – including the disposition of securities held by B – and (again, through B) controls C's investment decisions.
>
> Similarly, it is ultimately A which benefits from investment returns generated through C. Any income generated by C redounds to B's benefit, that is, through income obtained from C, B gains funds or assets which it can use either to finance itself in respect of capital and/or operations. This is a direct benefit to B, itself a Philippine national. This is also an indirect benefit to A, a collectivity of Philippine nationals, as then, its business – B – not only becomes more viable as a going concern but also becomes equipped to funnel income to A.
>
> Moreover, beneficial ownership need not be direct. A controlling shareholder is deemed the indirect beneficial owner of securities (e.g., shares) held by a corporation of which he or she is a controlling shareholder. Thus, in the previous illustration, A, the controlling shareholder of B, is the indirect beneficial owner of the shares in C to the

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[19] J. Leonen, dissenting opinion in *Narra Nickel v. Redmont*, G.R. No. 195580, April 21, 2014, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/april2014/195580_leonen.pdf> 39 [Per J. Velasco, Jr., Third Division].

[20] Id. at 43–44.

[21] Id. at 44.

extent that they are held by B.[22]

However, 60 percent equity ownership is but a minimum. It is in this regard that the Dissent to the April 21, 2014 Decision recognized that the Grandfather Rule properly finds application as a "supplement" to the Control Test:

> Bare ownership of 60% of a corporation's shares would not suffice. What is necessary is such ownership as will ensure control of a corporation.
>
> In *Gamboa*, "[f]ull beneficial ownership of 60 percent of the outstanding capital stock, coupled with 60 percent of the voting rights, is required."[23] ***With this in mind, the Grandfather Rule may be used as a supplement to the Control Test, that is, as a <u>further</u> check to ensure that control and beneficial ownership of a corporation is in fact lodged in Filipinos.***
>
> For instance, Department of Justice Opinion No. 165, series of 1984, identified the following "significant indicators" or badges of "dummy status":
>
> 1. That the foreign investor provides practically all the funds for the joint investment undertaken by Filipino businessmen and their foreign partner[;]
>
> 2. That the foreign investors undertake to provide practically all the technological support for the joint venture[; and]
>
> 3. That the foreign investors, while being minority stockholders, manage the company and prepare all economic viability studies.[24]
>
> In instances where methods are employed to disable Filipinos from exercising control and reaping the economic benefits of an enterprise, the ostensible control vested by ownership of 60% of a corporation's capital may be pierced. Then, the Grandfather Rule allows for a further, more exacting examination of who actually controls and benefits from holding such capital.[25]

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22 Id.

23 *Gamboa v. Teves*, G.R. No. 176579, June 28, 2011, 652 SCRA 690, 730 [Per J. Carpio, En Banc], as cited in J. Leonen, dissenting opinion in *Narra Nickel v. Redmont*, G.R. No. 195580, April 21, 2014, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/april2014/195580_leonen.pdf> 46 [Per J. Velasco, Jr., Third Division].

24 Sec. of Justice Op No. 165, s. 1984, as cited in J. Leonen, dissenting opinion in *Narra Nickel v. Redmont*, G.R. No. 195580, April 21, 2014, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/april2014/195580_leonen.pdf> 47 [Per J. Velasco, Jr., Third Division].

25 J. Leonen, dissenting opinion in *Narra Nickel v. Redmont*, G.R. No. 195580, April 21, 2014, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/april2014/195580_leonen.pdf> 46–47 [Per J. Velasco, Jr., Third Division].

The majority's Resolution denying the present Motion for Reconsideration recognizes that the Grandfather Rule alone does not suffice for reckoning Filipino and foreign equity ownership in corporations engaged in nationalized economic activities. The majority echoes the characterization of the applicability of the Grandfather Rule as only supplementary[26] and explains:

> The Grandfather Rule, standing alone, should not be used to determine the Filipino ownership and control in a corporation, as it could result to an otherwise foreign corporation rendered qualified to perform nationalized or partly nationalized activities. Hence, **it is only when the Control Test is first complied with that the Grandfather Rule may be applied.** Put in another manner, if the subject corporation's Filipino equity falls below the threshold 60%, the corporation is immediately considered foreign-owned, in which case, the need to resort to the Grandfather Rule disappears.
>
> On the other hand, **a corporation that complies with the 60-40 Filipino to foreign equity requirement can be considered a Filipino corporation *if there is no doubt* as to who has the "beneficial ownership" and "control" of the corporation. In that instance, there is no need for** a dissection or further inquiry on the ownership of the corporate shareholders in both the investing and investee corporation **or the application of the Grandfather Rule.** As a corollary rule, even if the 60-40 Filipino to foreign equity is apparently met by the subject or investee corporation, **a resort to the Grandfather Rule is necessary *if doubt exists* as to the *locus* of the "beneficial ownership" and "control."**[27]

III

Proceeding from the actions of the DENR Panel of Arbitrators is improper

Following the above-quoted portion in its discussion, the majority states that "[i]n this case, a further investigation as to the nationality of the personalities with the beneficial ownership and control of the corporate shareholders in both the investing and investee corporations is necessary."[28]

The majority then proceeds to an analysis of the equity structures of petitioners. The analysis notes that 59.97% of Narra's 10,000 shares[29] is held by Patricia Louise Mining and Development Corporation (Patricia Louise), 65.96% of whose shares is, in turn, held by Palawan Alpha South Resources Development Corporation (PASRDC). It adds that 59.97% of

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26 Id.

27 *Narra Nickel v. Redmont*, G.R. No. 195580, April 21, 2014, 12 [Per J. Velasco, Jr., Special Third Division Resolution]. Emphasis and underscoring from the original, citation omitted.

28 Id.

29 The majority's Resolution fails to specify if these are all common shares.

Tesoro's 10,000 common shares is held by Sara Marie Mining, Inc. (Sara Marie), a Filipino corporation, 66.63% of whose shares is, in turn, held by Olympic Mines and Development Corporation (Olympic), another Filipino corporation. Finally, 59.97% of McArthur's 10,000 common shares is held by Madridejos Mining Corporation (Madridejos), a Filipino corporation, 66.63% of whose shares is, in turn, held by Olympic.

The majority also notes that 39.98% of Narra's shares is held by Canadian corporation MBMI Resources, Inc. (MBMI), while 39.98% of Tesoro's and McArthur's common shares is held by MBMI.[30] It adds that in the case of the majority shareholder of Narra (i.e., Patricia Louise), 33.96% of its shares is owned by MBMI, while in the cases of the respective majority shareholders of Tesoro and McArthur (i.e., Sara Marie, and Madridejos, respectively), 33.31% of their shares is held by MBMI.

The respective Filipino majority shareholders of Patricia Louise, Sara Marie, and Madridejos (i.e., PASRDC in the case of Patricia Louise, and Olympic in the cases of Sara Marie and Madridejos) did not pay for shares. Instead, MBMI paid for their respective paid-up capital. The majority concludes, applying the Grandfather Rule, that a foreign corporation — MBMI — breached the permissible maximum of 40% foreign equity participation in the three (3) petitioner corporations and that petitioners are foreign corporations not entitled to mineral production sharing agreements.

My Dissent to the April 21, 2014 Decision noted the inadequacy of relying merely on the denomination of shares as common or preferred:

> Proceeding from the findings of the Court of Appeals in its October 1, 2010 decision in CA-G.R. SP No. 109703, it appears that at least 60% of equities in Narra, Tesoro, and McArthur is owned by Philippine nationals. Per this initial analysis, Narra, Tesoro, and McArthur ostensibly satisfy the requirements of the Control Test in order that they may be deemed Filipino corporations.
>
> Attention must be drawn to how these findings fail to indicate which (fractional) portion of these equities consist of "shares of stock entitled to vote in the election of directors" or, if there is even any such portion of shares which are not entitled to vote. These findings fail to indicate any distinction between common shares and preferred shares (not entitled to vote). Absent a basis for reckoning non-voting shares, there is, thus, no basis for diminishing the 60% Filipino equity holding in Narra, Tesoro, and McArthur and undermining their having ostensibly satisfied the requirements of the Control Test in order to be deemed Filipino corporations qualified to enter into MPSAs.[31]

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30 The majority's Resolution also fails to specify if these are all common shares.

31 J. Leonen, dissenting opinion in *Narra Nickel v. Redmont*, G.R. No. 195580, April 21, 2014, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/april2014/195580_leonen.pdf> 47–48 [Per J. Velasco, Jr., Third Division].

It is the majority's position that the mere reckoning of how shares are denominated — whether common or preferred — suffices. I, however, proffer an analysis that requires looking into the actual voting rights vested on each class of shares. While it is true that preferred shares are generally viewed as non-voting shares, a conclusion that the preferred shares involved in this case are totally bereft of voting rights is not warranted by a cursory consideration of how they are denominated.

The same Dissent conceded that a "more thorough consideration . . . could yield an entirely different conclusion."[32] This is what the majority endeavors to embark on. However, it is improper to proceed, as the majority does, from the action of a body without competence and jurisdiction as well as the imprudent acts of forum shopping of Redmont, and, in the process, lend legitimacy to the DENR Panel of Arbitrators' and Redmont's illicit actions:

> Having made these observations, it should not be discounted that a more thorough consideration – as has been intimated in the earlier disquisition regarding how 60% Filipino equity ownership is but a minimum and how the Grandfather Rule may be applied to further examine actual Filipino ownership – could yield an entirely different conclusion. In fact, Redmont has asserted that such a situation avails.
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> ***However, the contingencies of this case must restrain the court's consideration of Redmont's claims. Redmont sought relief from a body without jurisdiction – the Panel of Arbitrators – and has engaged in blatant forum shopping. It has taken liberties with and ran amok of rules that define fair play. It is, therefore, bound by its lapses and indiscretions and must bear the consequences of its imprudence***.[33]

IV

Redmont engaged in blatant forum shopping

It would be remiss of this court to overlook Redmont's acts of forum shopping. To do so would enable Redmont to profit from its own imprudence and for this court to countenance a manifest disrespect for courts and quasi-judicial bodies. As extensively discussed in my Dissent to the April 21, 2014 Decision:

> Redmont has taken at least four (4) distinct routes all seeking substantially the same remedy. Stripped of their verbosity and legalese, Redmont's petitions before the DENR Panel of Arbitrators, complaint before the Regional Trial Court, complaint before the Securities and Exchange Commission, and petition before the Office of the President all

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32 Id. at 52.
33 Id.

> seek to prevent Narra, Tesoro, and McArthur as well as their co-respondents and/or co-defendants from engaging in mining operations. Moreover, these are all grounded on the same cause (i.e., that they are disqualified from doing so because they fail to satisfy the requisite Filipino equity ownership) and premised on the same facts or circumstances.
>
> Redmont has created a situation where multiple tribunals must rule on the extent to which the parties adverse to Redmont have met the requisite Filipino equity ownership. It is certainly possible that conflicting decisions will be issued by the various tribunals over which Redmont's various applications for relief have been lodged. It is, thus, glaring that the very evil sought to be prevented by the rule against forum shopping is being foisted by Redmont.
>
> . . . .
>
> It strains credulity to accept that Redmont's actions have not been willful. By filing petitions with the DENR Panel of Arbitrators, Redmont started the entire series of events that have culminated in: first, the present petition; second, the de-consolidated G.R. No. 205513; and third, at least one (1) more petition filed with this court.[34]
>
> Following the adverse decision of the Panel of Arbitrators, Narra, Tesoro, and McArthur pursued appeals before the Mines Adjudication Board. This is all but a logical consequence of the POA's adverse decision. While the appeal before the MAB was pending, Redmont filed a complaint with the SEC and then filed a complaint with the Regional Trial Court to enjoin the MAB from proceeding. Redmont seems to have conveniently forgotten that it was its own actions that gave rise to the proceedings before the MAB in the first place. Moreover, even as all these were pending and in various stages of appeal and/or review, Redmont still filed a petition before the Office of the President.
>
> Consistent with Rule 7, Section 5 of the 1997 Rules of Civil Procedure, the actions subject of these consolidated petitions must be dismissed with prejudice.[35]

Apart from the Petition subject of the present Motion for Reconsideration, two (2) other cases involving the same parties are now pending with this court. The first, G.R. No. 205513, relates to a Complaint for Revocation of the certificates of registration of Narra, Tesoro, and McArthur filed by Redmont with the Securities and Exchange Commission. G.R. No. 205513 was consolidated but later de-consolidated with this case. The second is a case pending with this court's First Division. This relates to the Petition filed by Redmont with the Office of the President in which it sought the cancellation of the financial or technical assistance agreement (FTAA) applications of Narra, Tesoro, and McArthur.

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[34] Arising from Redmont's Petition with the Office of the President.

[35] Id. at 53-55.

That there are now three (3) simultaneously pending Petitions with this court is the result of Redmont's contemporaneously having sought remedies from:

1. The DENR Panel of Arbitrators;
2. The Securities and Exchange Commission;
3. The Regional Trial Court, Quezon City; and
4. The Office of the President.

While this and the two other cases pending with this court diverge as to the procedural routes they have taken, they all boil down to the central issue of the nationalities of Narra, Tesoro and McArthur. It is manifest that Redmont engaged in blatant forum shopping. The April 21, 2014 Decision effectively rewarded Redmont's abuse of court processes. Worse, maintaining the status quo of having a multiplicity of cases reinforces the stance of leaving Redmont to reap the benefits of its unconscionable scheme.

ACCORDINGLY, I vote to grant the Motion for Reconsideration. I reiterate my vote to **GRANT** the Petition for Review on Certiorari subject of G.R. No. 195580. The assailed Decision dated October 1, 2010 and the assailed Resolution dated February 15, 2011 of the Court of Appeals Seventh Division in CA-G.R. SP No. 109703, which reversed and set aside the September 10, 2008 and July 1, 2009 Orders of the Mines Adjudication Board, should be **SET ASIDE and DECLARED NULL AND VOID.** The September 10, 2008 Order of the Mines Adjudication Board dismissing the Petitions filed by Redmont Consolidated Mines with the DENR Panel of Arbitrators must be **REINSTATED.**

MARVIC M.V.F. LEONEN
Associate Justice