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FIRST DIVISION

[G.R. No. 233857; March 18, 2021]
(Formerly UDK 16000)

AGAPITO A. SALIDO, JR., *Petitioner, v.* **ARAMAYWAN METALS DEVELOPMENT CORPORATION, CERLITO SAN JUAN, CORAZON SAN JUAN, CRISTINA MARIE SAN JUAN,** *Respondents*.

APPEARANCES OF COUNSEL

Noriega Bazar Noriega Law Offices for respondents.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is a Petition for Review on *Certiorari* (Petition) under Rule 45 of the Rules of Court assailing the Amended Decision[1] of the Court of Appeals (CA) dated January 31, 2017 (Amended Decision) in CA-G.R. CV No. 98934, declaring as void certain resolutions of the board of directors of Aramaywan Metals Development Corporation (Aramaywan).

Facts

This case is an intra-corporate dispute involving two different factions within Aramaywan, a corporation duly organized under the laws of the Philippines. Sometime in April 2005, Cerlito San Juan (San Juan), Ernesto Mangune (Mangune), and Agapito Salido, Jr. (Salido), along with four other individuals (collectively, Salido faction), agreed to form two mining corporations, namely Aramaywan and Narra Mining Corporation (Narra Mining).[2] San Juan was tasked to finance the initial

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[1] *Rollo*, pp. 54-71. Penned by Associate Justice Ma. Luisa C. Quijano-Padilla with Associate Justices Normandie Pizarro and Samuel H. Gaerlan (now a Member of this Court), concurring.

[2] Id. at 22.

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operations of the intended corporation, Mangune was in charge of the technical aspect of the operations, while Salido and the Salido faction were in charge of the mining site and securing the necessary permits.[3] They entered into an Agreement to Incorporate (Agreement), wherein it was stipulated that San Juan would advance the paid-up subscription for Aramaywan amounting to ₱2,500,000.00 and would assure the payment of the subscription of the capital stock of Narra Mining.[4] In exchange, San Juan would own 55% of the stocks of Aramaywan and 35% of the stocks of Narra Mining.[5] The exact terms of the Agreement were:

SECTION 2. The capital stock of each of the Corporation shall be TEN MILLION PESOS (₱10,000,000.00) to be divided into 100,000 shares with par value of ₱100.00 each. The parties shall subscribe and fully pay 25,000 shares of the capital stock or ₱2,500,000.00 of each of the two corporations. Cerlito G. San Juan shall advance the paid-up subscription for ARAMAYWAN METALS DEVELOPMENT CORPORATION in the sum of [₱]2,500,000.00 and shall assure the payment of the subscription of ₱2,500,000.00 of the capital stock of NARRA MINING CORPORATION.

SECTION 3. The distribution of the subscription by the parties to the authorized capital stock shall be as follows:

ARAMAYWAN METALS DEVELOPMENT CORPORATION:

CERLITO G. SAN JUAN	—	55%
ERNESTO U. MANGUNE	—	10%
AGAPITO A. SALIDO, JR.	—	7%
WENIFRED A. TUPAZ	—	7%
EFIONONO A. TUPAZ	—	7%
TEODORA L. PLATA	—	7%
BERNALDO A. TUPAZ	—	7%

NARRA MINING CORPORATION:

CERLITO G. SAN JUAN	—	35%

[3] Id. at 22.

[4] Id. at 23.

[5] Id. at 24.

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ERNESTO U. MANGUNE	—	10%
AGAPITO A. SALIDO, JR.	—	11%
WENIFRED A. TUPAZ	—	11%
EFIONONO A. TUPAZ	—	11%
TEODORA L. PLATA	—	11%
BERNALDO A. TUPAZ	—	11%[6]

In line with the said Agreement, San Juan then advanced the ₱2,500,000.00 paid-up subscription of Aramaywan.[7] This is evidenced by a Standard Chartered Bank Certificate indicating that the amount of ₱2,500,000.00 was deposited in San Juan's name as treasurer, held by him in trust for the corporation.[8] Aramaywan was then subsequently incorporated with nine named directors. Its Articles of Incorporation[9] states that out of its 100,000 shares, 25,000 are subscribed **and paid** as follows:

Name	**No. of Shares**	**Amount Subscribed**	**Amount Paid**
Cerlito G. San Juan	5,000	500,000	500,000
Corazon S. San Juan	5,000	500,000	500,000
Cristina Marie San Juan	3,750	375,000	375,000
Ernesto U. Mangune	2,500	250,000	250,000
Agapito A. Salido, Jr.	1,750	175,000	175,000
Efionono A. Tupaz	1,750	175,000	175,000
Wenifred A. Tupaz	1,750	175,000	175,000
Teodora A. Plata	1,750	175,000	175,000
Bernaldo A. Tupaz	1,750	175,000	175,000
	25,000	2,500,000	2,500,000

San Juan's 55% share, representing 13,750 shares in Aramaywan, was divided into three: 5,000 shares for himself,

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[6] Id. at 23-24 (footnote 16 of the Decision dated February 14, 2012 of Branch 159, Regional Trial Court of Pasig City, penned by Judge Rodolfo R. Bonifacio).

[7] Id. at 60.

[8] Id. at 64.

[9] Id. at 23 and 60.

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another 5,000 shares for Corazon San Juan (Corazon), his wife, and 3,750 shares for Cristina Marie San Juan (Cristina Marie), his daughter. Corazon and Cristina Marie were also named directors of the corporation, and together with San Juan, they form the San Juan faction in Aramaywan.[10] The rest of the five directors, excluding Mangune, representing 35% of the shares in the corporation, form the Salido faction in Aramaywan. The named officers of the corporation were San Juan as Chairman and Treasurer, Salido as President, and Mangune as Corporate Secretary.

On November 25-26, 2005, the Board of Directors of Aramaywan had its first Board Meeting. In the said meeting, the Salido faction claimed that San Juan delivered only ₱932,209.16 in cash during the incorporation process of the corporation. The Salido faction claimed that the rest of the ₱2,500,000.00 remained undelivered as it remained under San Juan's name. Thus, the Salido faction claimed that San Juan was in breach of his undertaking to advance the payment of Aramaywan's capital stock. As regards the incorporation of Narra Mining, it is undisputed that San Juan has yet to register the same, although San Juan claimed that the Salido faction has not yet demanded its registration. Because of these supposed breaches by San Juan of his obligations under the Agreement, Salido made a proposal to reduce San Juan's shares in Aramaywan from 55% to 15%. It is not clear whether San Juan accepted this proposal or not.

On January 27, 2006, San Juan received a Notice of Special Meeting of the Board from a certain Atty. Roland Pay (Atty. Pay). The San Juan faction wrote Atty. Pay a letter directing him to explain as to how he became the corporate secretary, but the latter never responded. The special board meeting was nevertheless conducted on February 5, 2006, wherein resolutions were passed by the Salido faction regarding the following matters:

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[10] Id.

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a. Resolution No. 01-2006: "confirming"[11] the reduction of the shares of San Juan in Aramaywan from 55% to 15%. San Juan's shares were reduced to allegedly accurately represent that amount of money he actually shelled out for the corporation, which was allegedly only ₱932,209.16 and not the total amount of ₱2,500,000.00;

b. Resolution No. 02-2006: change of corporate address from Taguig to Palawan;

c. Resolution No. 03-2006: cancelling the shares of Corazon and Cristina Marie by virtue of the reduction of shares of San Juan;

d. Resolution No. 04-2006: That the registration of Narra Mining Corporation shall no longer proceed on account of San Juan's non-compliance with his obligation to advance the necessary amount.

e. Resolution No. 05-2006: authorizing Salido, as President and CEO of Aramaywan, to negotiate and transact with any entity on behalf of Aramaywan, and to sign a memorandum of agreement to speed up the mining operations for the benefit of the corporation;

f. Resolution No. 06-2006: appointment of a new corporate secretary in the person of Atty. Roland E. Pay per minutes of a Special Meeting on November 25, 2005; and

g. Resolution No. 07-2006: appointment of a Teodora L. Plata as the new Treasurer of Aramaywan.[12]

Several other meetings were called by the Salido faction through Atty. Pay. The supposed approved acts of the corporation in these meetings were similarly questioned by the San Juan faction. The San Juan faction, on the other hand, in its belief

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[11] This resolution was adopted by the Salido faction to confirm the supposed reduction of San Juan's shares to which the latter allegedly agreed to during the November 25-26, 2005 meetings.

[12] *Rollo*, pp. 32, 68.

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that it still had control over the corporation, called for stockholders' and board meetings and approved supposed corporate acts. Both contending parties then submitted to the Securities and Exchange Commission (SEC) conflicting General Information Sheets. Thereafter, the San Juan faction filed with the Regional Trial Court of Pasig (RTC) a complaint which sought to invalidate the acts of the Salido faction.

RULING OF THE RTC

On February 14, 2012, the RTC issued a Decision[13] dismissing the complaint filed by the San Juan faction. The dispositive portion of the Decision reads:

> **WHEREFORE**, premises considered, judgment is hereby rendered:
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> 1. Declaring the agreement between the corporation and plaintiff Cerlito San Juan for the latter's conversion of 10,000 of his shares into treasury shares as well as the cancellation of shares of plaintiffs Corazon and Cristina San Juan [v]alid, binding and effective as between the parties;
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> 2. Directing plaintiffs Cerlito San Juan and his nominees to execute a registrable public document for the transfer of their 10,000 shares in favor of the corporation;
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> 3. Declaring the appointment of defendant Roland E. Pay as corporate secretary of plaintiff corporation effective November 26, 2005 valid and effective;
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> 4. Declaring the special board meeting held on February 5, 2005 and the subsequent annual and special stockholders' and board meetings called and held by the Salido Group valid;
>
> 5. Declaring Resolution Nos. 1-2006, 2-2006, 3-2006, 4-2006, 6-2006, 7-2006 valid and binding, except for Resolution No. 5-2006, which is hereby declared invalid but without prejudice to the right of the corporation to have the same ratified;

[13] Id. at 20-35. Penned by Judge Rodolfo R. Bonifacio.

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6. Declaring the issuance of original unissued shares as well as treasury shares valid;

7. Declaring the stockholders' and board meetings of San Juan group as well as all proceedings, actions, resolutions, decisions made therein null and void;

8. Dismissing plaintiffs' claims for damages and attorney's fees against defendants.

No pronouncement as to costs.

SO ORDERED.[14]

The RTC upheld Atty. Pay's appointment as corporate secretary as the Salido faction was able to prove the same through the minutes of the board meeting conducted on November 25-26, 2005. As Atty. Pay was deemed to be the rightful corporate secretary of the corporation, the RTC went on to uphold as valid the meetings called by him and the actions taken therein. The RTC also held that San Juan voluntarily and expressly agreed to the reduction of his shares, hence he could no longer repudiate the same. The RTC held that the 40% share of San Juan was converted into treasury shares in exchange for the termination of San Juan's obligation (1) to release the rest of the ₱1,567,790.84 to the corporation and (2) to incorporate Narra Mining. The RTC upheld the validity of the meetings of the Salido faction as they were supposedly already in control of the corporation because of the reduction of San Juan's shares. The San Juan faction thus appealed to the CA.

RULING OF THE CA

In a Decision[15] dated January 19, 2016, the CA affirmed the ruling of the RTC that the reduction of San Juan's shares was valid. The CA held that the minutes of the meeting revealed that San Juan agreed to the said reduction, and that the same was a valid corporate act on the part of the corporation. The CA likewise agreed with the RTC that San Juan's reduced shares,

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[14] Id. at 35.

[15] Id. at 37-53.

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representing 40% of the shares in the corporation after his shares were reduced from 55% to 15%, validly became treasury shares. The CA held that the consideration for such conversion was the termination of San Juan's obligation to pay the ₱1,567,790.1 that he still supposedly owed the company as he only gave ₱932,209.16.

The San Juan faction then sought reconsideration of this Decision.

On January 31, 2017, the CA issued an Amended Decision,[16] reversing its earlier decision. The dispositive portion of the Amended Decision reads:

> **WHEREFORE**, in view of the foregoing, plaintiffs-appellants' Motion for Reconsideration is partially **GRANTED**.
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> The present appeal is **PARTLY GRANTED** and this Court's earlier Decision promulgated on January 19, 2016 is **MODIFIED**.
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> Accordingly, a new judgment is hereby entered **AFFIRMING** the appealed Decision dated February 14, 2012 of the RTC, Branch 159, Pasig City in *SEC Case No. 07-89* only as to the declaration of validity of the appointment of Atty. Roland Pay as corporate secretary, declaration of validity of Resolution Nos. 4-2006, 6-2006 and 7-2006, the invalidity of Resolution 5-2006, without prejudice to ratification; and the dismissal of the claim for damages and attorney's fees. The rest of the trial court's pronouncement as explained above are hereby **REVERSED and SET ASIDE**.
>
> **SO ORDERED.**[17] (Emphasis and underscoring in the original)

The CA reversed itself and said that upon further scrutiny of the minutes, it appears that San Juan did not consent to the reduction of his shares. Further, the CA held that it was inaccurate for the Salido faction to claim that San Juan has yet to fulfill his obligation under the Agreement. The CA noted that, according to the Agreement, San Juan's obligation was to advance the paid-up subscription in Aramaywan. This, San Juan was able

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[16] Supra note 1.

[17] *Rollo*, pp. 70-71.

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to do as evidenced by the Standard Chartered Bank certificate in the amount of ₱2,500,000.00 deposited in trust for Aramaywan. Since San Juan fulfilled his obligation with respect to Aramaywan, then he was legally entitled to 55% of the shares in the corporation pursuant to the Agreement. The CA stated that while San Juan failed to incorporate Narra Mining, admittedly contrary to what was agreed upon in the Agreement, this did not merit the reduction of San Juan's shares in Aramaywan as San Juan's breach pertained to his obligation to incorporate Narra Mining.

Further, the CA held as erroneous the RTC's ruling that San Juan's shares were validly converted into treasury shares. The CA held that there was no conversion because (1) San Juan's investment was not returned and (2) the corporation did not have unrestricted retained earnings to pay for the reacquired shares, if it did so intend to reacquire the same.

Salido sought reconsideration of the Amended Decision, but the same was denied by the CA in a Resolution[18] dated June 20, 2017. Hence, this Petition by Salido.

ISSUE

For resolution of the Court is the issue of whether the CA erred in issuing the Amended Decision which held that San Juan's shares were not validly reduced.

THE COURT'S RULING

Before delving into the main issue raised in this case, the Court deems it proper to emphasize that under Rule 45 of the Rules of Court, only questions of law may be raised.[19] The reason behind this is that this Court is not a trier of facts and will not re-examine and re-evaluate the evidence on record.[20]

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[18] Id. at 73-74.

[19] RULES OF COURT, Rule 45, Sec. 1.

[20] *Cereno v. Court of Appeals*, 695 Phil. 820, 828 (2012).

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In the present case, Salido hinges his Petition on questions of fact, more specifically, that San Juan agreed to the reduction of his shares in one of the meetings. This cannot be done in a petition for review under Rule 45.

While it is true that there are exceptions to this rule, such as is in this case where the findings of fact of the CA differ from those of the trial court, Salido did not attach any minutes of the relevant meetings to aid the Court in understanding and verifying his factual allegations. It was incumbent upon him as the petitioner to attach "such material portions of the record as would support the petition."[21] The only annexes to the petition, however, are the Decisions of the RTC and the CA. Moreover, Salido did not file a Reply despite the Court's Order[22] for him to do so.

For these reasons alone, the Petition should be dismissed. In the interest of substantial justice, however, the Court deems it proper to discuss the substantive issue and explain the Petition's lack of merit.

San Juan's shares were not validly converted into treasury shares because Aramaywan did not have unrestricted retained earnings

The Petition asserts that, as held by the RTC, San Juan's shares were validly reduced and in turn converted into treasury shares.

The Court disagrees.

Batas Pambansa Blg. 68, or the Corporation Code, the law applicable at the time the events in this case occurred, clearly sets out the parameters when a corporation may reacquire its shares and convert them into treasury shares. According to Section 9 of the Corporation Code, "[t]reasury shares are shares

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[21] RULES OF COURT, Rule 45, Sec. 4.

[22] Court's Resolution dated September 12, 2018, *rollo*, p. 111.

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of stock which have been issued and fully paid for, but subsequently reacquired by the issuing corporation by purchase, redemption, donation or through some other lawful means."[23] Apart from reacquiring the shares through some lawful means, the Corporation Code is also explicit that while a corporation has the power to purchase or acquire its own shares, the corporation must have unrestricted retained earnings in its books to cover the shares to be purchased or acquired.[24] In addition, in cases where the reason for reacquiring the shares is because of the unpaid subscription, the Corporation Code is likewise explicit that the corporation must purchase the same during a delinquency sale.[25]

All the foregoing requirements were not met in the reduction of San Juan's shares.

At the outset, the records are bereft of any showing that Aramaywan had unrestricted retained earnings in its books at

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[23] This provision remains unchanged in the Revised Corporation Code. Section 9 of the Revised Corporation Code reads:

SECTION 9. *Treasury Shares*. — Treasury shares are shares of stock which have been issued and fully paid for, but subsequently reacquired by the issuing corporation through purchase, redemption, donation, or some other lawful means. Such shares may again be disposed of for a reasonable price fixed by the board of directors.

[24] CORPORATION CODE, Sec. 41. This is still a requirement under the Section 40 of the Revised Corporation Code which states:

SECTION 40. *Power to Acquire Own Shares*. — Provided that the corporation has unrestricted retained earnings in its books to cover the shares to be purchased or acquired, a stock corporation shall have the power to purchase or acquire its own shares for a legitimate corporate purpose or purposes, including the following cases:

(a) To eliminate fractional shares arising out of stock dividends;

(b) To collect or compromise an indebtedness to the corporation, arising out of unpaid subscription, in a delinquency sale, and to purchase delinquent shares sold during said sale; and

(c) To pay dissenting or withdrawing stockholders entitled to payment for their shares under the provisions of this Code.

[25] CORPORATION CODE, Sec. 41 (2). *See* REVISED CORPORATION CODE, Sec. 40 (b), as quoted above.

the time the reduction of shares was made. During that time, Aramaywan had just been existing for a few months, and had not in fact been able to perform mining activities yet. It is thus both highly doubtful and unsupported by the record that Aramaywan had unrestricted retained earnings to be able to purchase its own shares.

The Court has observed that: "The *trust fund doctrine* backstops the requirement of unrestricted retained earnings to fund the payment of the shares of stocks of the withdrawing stockholders."[26] Under the *trust fund doctrine*, "the capital stock, property, and other assets of a corporation are regarded as equity in trust for the payment of corporate creditors, who are preferred in the distribution of corporate assets."[27] Thus, "[t]he creditors of a corporation have the right to assume that the board of directors will not use the assets of the corporation to purchase its own stock for as long as the corporation has outstanding debts and liabilities. There can be no distribution of assets among the stockholders without first paying corporate debts."[28]

In this case, there was no showing that, at the time the reduction of San Juan's shares was made, Aramaywan had unrestricted retained earnings in its books. Neither was it shown that it did not have creditors or that they were already paid before the agreement to release San Juan was made.

Moreover, it must be emphasized that San Juan's subscriptions have already been ***fully paid*** by him, and as such, Aramaywan cannot validly reduce his shares without giving a corresponding return of his investment. As earlier stated, San Juan contributed ₱2,500,000.00 evidenced by a Standard Chartered Bank certificate in San Juan's name which indicates that he holds that money ***in trust*** for Aramaywan.

The RTC itself, in narrating its factual findings, noted that "the payment for the subscription of shares of all the subscribers

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[26] *Turner v. Lorenzo Shipping Corp.*, 650 Phil. 372, 387 (2010).

[27] Id.

[28] Id. at 387-388.

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were paid by plaintiff Cerlito San Juan as his contribution in the formation and running of the corporation. The payment for the subscribed shares, however, was under the name of plaintiff Cerlito San Juan **in trust** for plaintiff corporation."[29]

It is well established that when there is a trust relationship, there is a separation of the legal title and equitable ownership of the property.[30] In a trust relation, legal title is vested in the fiduciary or trustee, while equitable ownership is vested in the *cestui que trust* or beneficiary.[31] Here, it is clear that San Juan's name was reflected in the bank certificate only because he is the trustee in the trust relation, but Aramaywan is nevertheless the beneficiary. This means that San Juan only had legal title over the money, but the ownership of the same ultimately remained with Aramaywan. As aptly found by the CA in its Amended Decision:

> The allegation that only ₱932,000.00 was given in cash during the incorporation process is baseless because the funds remained in the name of Aramaywan and as such may be withdrawn anytime upon approval of the board.
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> The fact that the deposit was initially made in the name of San Juan as treasurer-in-trust for Aramaywan is also irrelevant. As correctly argued by San Juan and as expressly stated in the bank certificate: "x x x said deposit is clear and free from any lien, restriction, condition or hold-out and **may be withdrawn in behalf of said company** upon presentation of proof of due incorporation thereof."[32] (Emphasis supplied)

The following finding is bolstered by the fact that Aramaywan's Articles of Incorporation[33] states that ₱2,500,000.00 of its authorized capital stock has already been

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[29] *Rollo*, p. 25. Emphasis supplied.

[30] *Cañezo v. Rojas*, 563 Phil. 551, 567 (2007).

[31] Id.

[32] *Rollo*, p. 66.

[33] Id. at 23 and 60.

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paid. This is in accordance with the parties' Agreement, which provides that "Cerlito G. San Juan shall advance the paid-up subscription for ARAMAYWAN METALS DEVELOPMENT CORPORATION in the sum of ₱2,500,000.00."[34] Notably, the SEC issued a certificate of incorporation on September 9, 2005,[35] which means that it found the contents of the Articles of Incorporation and the Treasurer's Affidavit — which also contains the information on how the shares are subscribed and paid — to be correct.[36]

Considering that San Juan's subscriptions have been fully paid, Aramaywan cannot thus reduce his shares without a corresponding return of his investment. It is undisputed, however, that San Juan received nothing for the reduction of his shares.

In any event, if it were true that San Juan had unpaid subscriptions, the Corporation Code has provided a procedure

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[34] Paragraph 2 of the Agreement to Incorporate, id. at 60.

[35] Id. at 23.

[36] *See* Section 17 of the Corporation Code, which provides:

SECTION 17. *Grounds When Articles of Incorporation or Amendment May be Rejected or Disapproved*. — The Securities and Exchange Commission may reject the articles of incorporation or disapprove any amendment thereto if the same is not in compliance with the requirements of this Code. x x x The following are grounds for such rejection or disapproval: x x x

x x x x

3. That the Treasurer's Affidavit concerning the amount of capital stock subscribed and/or paid is false.

Section 16 of the Revised Corporation Code states:

SECTION 16. *Grounds When Articles of Incorporation or Amendment May be Disapproved*. — The Commission may disapprove the articles of incorporation or any amendment thereto if the same is not compliant with the requirements of this Code: x x x The following are grounds for such disapproval:

x x x x

(c) The certification concerning the amount of capital stock subscribed and/or paid is false[.]

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for the demand of such payment[37] and the holding of a delinquency sale in case of continued non-payment.[38] Thus,

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[37] SECTION 67. *Payment of Balance of Subscription*. — Subject to the provisions of the contract of subscription, the board of directors of any stock corporation may at any time declare due and payable to the corporation unpaid subscriptions to the capital stock and may collect the same or such percentage of said unpaid subscriptions, in either case with interest accrued, if any, as it may deem necessary.

Payment of any unpaid subscription or any percentage thereof, together with the interest accrued, if any, shall be made on the date specified in the contract of subscription or on the date stated in the call made by the board. Failure to pay on such date shall render the entire balance due and payable and shall make the stockholder liable for interest at the legal rate on such balance, unless a different rate of interest is provided in the by-laws, computed from such date until full payment. If within thirty (30) days from the said date no payment is made, all stocks covered by said subscription shall thereupon become delinquent and shall be subject to sale as hereinafter provided, unless the board of directors orders otherwise. *(This remains unchanged in the Revised Corporation Code, but it has been renumbered to Section 66.)*

[38] SECTION 68. *Delinquency Sale*. — The board of directors may, by resolution, order the sale of delinquent stock and shall specifically state the amount due on each subscription plus all accrued interest, and the date, time and place of the sale which shall not be less than thirty (30) days nor more than sixty (60) days from the date the stocks become delinquent.

Notice of said sale, with a copy of the resolution, shall be sent to every delinquent stockholder either personally or by registered mail. The same shall furthermore be published once a week for two (2) consecutive weeks in a newspaper of general circulation in the province or city where the principal office of the corporation is located.

Unless the delinquent stockholder pays to the corporation, on or before the date specified for the sale of the delinquent stock, the balance due on his subscription, plus accrued interest, costs of advertisement and expenses of sale, or unless the board of directors otherwise orders, said delinquent stock shall be sold at public auction to such bidder who shall offer to pay the full amount of the balance on the subscription together with accrued interest, costs of advertisement and expenses of sale, for the smallest number of shares or fraction of a share. The stock so purchased shall be transferred to such purchaser in the books of the corporation and a certificate for such stock shall be issued in his favor. The remaining shares, if any, shall be credited in favor of the delinquent stockholder who shall likewise be entitled to the issuance of a certificate of stock covering such shares.

even assuming it was true that San Juan had unpaid subscriptions, simply agreeing in a meeting for their reduction, thereby releasing the stockholder from his obligation to pay the unpaid subscriptions, cannot be the mode by which said unpaid subscriptions are settled. To allow corporations to do such an act would violate the aforementioned *trust fund doctrine* in corporation law. As the Court explained in *NTC v. CA*:[39]

> The term "capital" and other terms used to describe the capital structure of a corporation are of universal acceptance, and their usages have long been established in jurisprudence. Briefly, capital refers to the value of the property or assets of a corporation. The capital subscribed is the total amount of the capital that persons (subscribers or shareholders) have agreed to take and pay for, which need not necessarily be, and can be more than, the par value of the shares. **In fine, it is the amount that the corporation receives**, inclusive of the premiums if any, **in consideration of the original issuance of the shares**. In the case of stock dividends, it is the amount that the corporation transfers from its surplus profit account to its capital account. It is the same amount that can loosely be termed as the "trust fund" of the corporation. **The "Trust Fund" doctrine considers this subscribed capital as a trust fund for the payment of the debts of the corporation, to which the creditors may look for satisfaction. Until the liquidation of the corporation, no part of the subscribed capital may be returned or released to the stockholder** (except in the redemption of redeemable shares) without **violating this principle**. Thus, dividends must never impair the subscribed capital; **subscription commitments cannot be condoned or remitted; nor can the corporation buy its own shares using the subscribed capital as the consideration therefor**.[40] (Emphasis and underscoring supplied)

Should there be no bidder at the public auction who offers to pay the full amount of the balance on the subscription together with accrued interest, costs of advertisement and expenses of sale, for the smallest number of shares or fraction of a share, the corporation may, subject to the provisions of this Code, bid for the same, and the total amount due shall be credited as paid in full in the books of the corporation. Title to all the shares of stock covered by the subscription shall be vested in the corporation as treasury shares and may be disposed of by said corporation in accordance with the provisions of this Code. *(This remains unchanged in the Revised Corporation Code, but it has been renumbered to Section 67.)*

[39] G.R. No. 127937, July 28, 1999, 311 SCRA 508.

[40] Id. at 514-515.

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As early as 1923, in the case of *Philippine Trust Co. v. Rivera,*[41] the Court already prohibited corporations from releasing its stockholders from the payment of unpaid subscriptions without going through the formalities provided under the corporation law in effect at the time. In the aforementioned case, a board resolution was adopted to the effect that the corporation's capital should be reduced by 50%, and the subscribers released from the obligation to pay any unpaid balance of their subscription in excess of 50% of the same. In declaring the resolution ineffectual, the Court explained:

> It is established doctrine that **subscriptions to the capital of a corporation constitute a fund to which creditors have a right to look for satisfaction of their claims** and that the assignee in insolvency can maintain an action upon any unpaid stock subscription in order to realize assets for the payment of its debts. (Velasco *v.* Poizat, 37 Phil. 802) **A corporation has no power to release an original subscriber to its capital stock from the obligation of paying for his shares, without a valuable consideration for such release; and as against creditors a reduction of the capital stock can take place only in the manner and under the conditions prescribed by the statute or the charter or the articles of incorporation.** Moreover, strict compliance with the statutory regulations is necessary (14 C. J., 198, 620).
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> In the case before us the resolution releasing the shareholder from their obligation to pay 50 per centum of their respective subscriptions was an attempted withdrawal of so much capital from the fund upon which the company's creditors were entitled ultimately to rely and, having been effected without compliance with the statutory requirements, was wholly ineffectual.[42] (Emphasis and underscoring supplied)

Verily, if it were true that San Juan had unpaid subscriptions, it was invalid for the Board of Directors to waive such payment, for it would amount to a decrease in the corporation's capital stock which could not be accomplished without the formalities under Section 38 of the Corporation Code (Section 37 under

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[41] 44 Phil. 469 (1923).

[42] *Id.* at 470-471.

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the Revised Corporation Code) which includes, among others, the prior approval of the SEC.

In light of the foregoing principles and findings, the Court holds that the reduction of San Juan's shares was invalid. This remains true even assuming that San Juan had consented to the said reduction.

Even assuming San Juan agreed to the reduction of his shares, such agreement is void for lack of consideration

The RTC, as affirmed initially by the CA, ruled that Aramaywan validly acquired the shares of San Juan for a consideration. The RTC explained:

> On the other hand, as regards the issue of whether or not the shares of plaintiff Cerlito San Juan was validly reduced from 55% to 15%, the Court holds that the said contested reduction was valid and lawful. As can be gleaned from the same minutes of the meeting held on November 25-26, 2005 in Narra, Palawan, plaintiff Cerlito San Juan voluntarily and expressly agreed to the reduction of his shares from 55% to 15% in exchange, he will no longer be required to contribute to the corporation the remaining balance of the ₱2,500,000.00 of which he only gave ₱932,209.16 and to incorporate Narra Mining Corporation, he originally promised to undertake. x x x
>
> x x x x
>
> The parties' agreement for the reduction of shares of Mr. San Juan became effective and binding between and among them immediately on [the] same date that the agreement was made, *i.e.*, November 25, 2005 although no written agreement was entered into between the parties consistent with the provisions of Article 1356 of the New Civil Code of the Philippines. The agreement partakes the nature of conversion of 40% of plaintiff Cerlito San Juan's shares into treasury shares in exchange for the termination of his obligation to make additional cash contribution to the corporation and to incorporate Narra Mining Corporation. An agreement which was approved unanimously by all the directors present during the meeting held on November 25-26, 2005.

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Consequently, from the time that Mr. San Juan agreed to reduce his shares in favor of the corporation, said shares were automatically converted into treasury shares, pursuant to Section 9 of B.P. 68, otherwise known as the Corporation Code of the Philippines. x x x

x x x x

The conversion of the 10,000 shares of plaintiff Cerlito San Juan into treasury shares finds basis and justification in *Alfonso S. Tan vs[.] Securities and Exchange Commission, et al., G.R. No. 95696, March 3, 1992*, where the Supreme Court upheld as valid and lawful the conversion of 350 shares with a par value of only ₱35,000.00 at ₱100.00 per share into treasury stocks after petitioner therein exchanged them with ₱2,000,000.00 worth of stocks-in-trade of the corporation, is valid and lawful. Here the converted 10,000 shares of plaintiff Cerlito San Juan have a par value of ₱1,000,000.00 only, which was exchanged for the termination of his obligation to pay ₱1,567,790.1, the remaining balance of the ₱2,500,000.00, of which [he] delivered to plaintiff corporation the sum of ₱932,209.16 only.[43]

The foregoing ruling is incorrect.

The RTC's ruling is hinged on the premise that San Juan still had the pending obligation (1) to release the rest of his ₱1,567,790.1 contribution to the corporation and (2) to incorporate Narra Mining — and the extinguishment of these obligations constituted the consideration for the reduction of his shares. The Court finds this to be untenable.

As earlier illustrated, San Juan did not have any unpaid obligation as far as his subscriptions to Aramaywan's shares are concerned.

As regards the obligation to incorporate Narra Mining, while it is undisputed that San Juan has yet to fulfill this obligation, the CA notes that based on the minutes of the meeting held on November 25-26, 2005, "there was yet no demand for him to commence the incorporation of the other company, Narra [Mining]."[44] As well, based on the wording of the parties'

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[43] *Rollo*, pp. 27-28.

[44] Id. at 62.

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Agreement, San Juan's obligation as regards Narra Mining is only to "assure the payment of the subscription of ₱2,500,000.00 of the capital stock of NARRA MINING CORPORATION."[45] Based on the limited records that the Court has — again, because the petitioner did not attach such relevant copies of documents as would support his case — the Court cannot find a definitive obligation on the part of San Juan to incorporate Narra Mining by a certain date. Indeed, based on the foregoing wording of the Agreement, San Juan's obligation is only to make sure that the subscriptions of Narra Mining are paid, but the duty to incorporate the said corporation is not explicitly imposed on him.

The Court notes as well Resolution No. 04-2006 that the registration of Narra Mining would no longer be pursued due to financial reverses and instead the operations of Aramaywan would be improved.[46]

As San Juan did not have any unpaid obligations for the subscription of shares in Aramaywan, and neither was he in breach of his obligations for Narra Mining, then the Court concludes that the agreement to reduce the shares **did not have a cause or consideration**.

To reiterate, the Corporation Code allows corporations to reacquire its shares through some **lawful** means, but under the Civil Code, contracts without cause or consideration are void and produce no effect whatsoever.[47] Thus, the agreement between the parties — assuming it exists — is void and cannot therefore be a basis for the corporation to reacquire its shares.

CA was correct in its rulings regarding the validity of certain Resolutions of the Board of Directors of Aramaywan

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[45] Agreement to Incorporate, Sec. 2, id. at 23 (footnote 16 of the RTC Decision).

[46] *Rollo*, pp. 32, 68.

[47] CIVIL CODE, Art. 1352.

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While the main issue in this intra-corporate dispute is the validity of the reduction of San Juan's shares, the validity of certain resolutions adopted by the Aramaywan's Board of Directors is also at issue since a number of resolutions was adopted by the said Board after the November 25-26, 2005 meeting where the reduction was supposedly agreed upon. On the validity of these resolutions, the Court quotes with approval the following ruling of the CA:

> Anent the other board resolutions issued during the special board meeting on February 5, 2006: (1) Resolution 02-2006, transferring the place of principal place of business of Aramaywan from Taguig City to Palawan; (2) Resolution 04-2006, indicating that the incorporation of Narra shall no longer be pursued due to financial reverses and instead to improve and move forth with the operation of Aramaywan; and (3) Resolution 06-2006, reiterating the consensus made during the November 26, 2005 meeting for Atty. Roland E. Pay to act and perform the duties of the corporate secretary — we rule that except for the transfer of the principal place of business, all other resolutions were validly adopted by the board of directors of Aramaywan.
>
> The business of the corporation is conducted by the board of directors who were elected from among the holders of stock. This means that with regard to the ordinary business and affairs of the corporation, it is enough that there be a resolution from the board of directors, in a meeting duly called for that purpose. Contrary to plaintiffs-appellants' [San Juan's] position, although the special board meeting held on February 5, 2006 was not convened by San Juan who was the Chairman of the board, the resolutions may not be invalidated on this ground alone because Section 4 of the corporation's by-laws allows such meetings called upon the request of the majority of the directors.
>
> It was also wrong for plaintiffs-appellants to insist that there was no quorum during that special board meeting. We observe that there may have been a confusion as to the quorum needed in a stockholder's meeting *vis-à-vis* the quorum required in a board meeting, which deals with ordinary business concerns of the corporation.
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> Section 25 of the Corporation Code provides:

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> Section 25. Corporate officers, quorum. — Immediately after their election, the directors of a corporation must formally organize by the election of a president, who shall be a director, a treasurer who may or may not be a director, a secretary who shall be a resident and citizen of the Philippines, and such other officers as may be provided for in the by-laws. Any two (2) or more positions may be held concurrently by the same person, except that no one shall act as president and secretary or as president and treasurer at the same time.
>
> The directors or trustees and officers to be elected shall perform the duties enjoined on them by law and the by-laws of the corporation. Unless the articles of incorporation or the by-laws provide for a greater majority, a majority of the number of directors or trustees as fixed in the articles of incorporation shall constitute a quorum for the transaction of corporate business, and every decision of at least a majority of the directors or trustees present at a meeting at which there is a quorum shall be valid as a corporate act, except for the election of officers which shall require the vote of a majority of all the members of the board.
>
> Directors or trustees cannot attend or vote by proxy at board meetings.

The Articles of Incorporation of Aramaywan named nine (9) directors, which means that the presence of five (5) members is sufficient to constitute a quorum to push through with the board meeting and in that case, a vote of three (3) directors will be enough to ratify or approve a corporate act.

In our case, the resolution of no longer proceeding with the incorporation of Narra is an ordinary business affair and it was unanimously approved by the five (5) directors present during the February 5, 2006 special board meeting. This is also true as regards the appointment of Atty. Pay as corporate secretary. We see no reason to depart from the finding of the trial court on this aspect especially since evidence shows that the appointment of Atty. Pay as corporate secretary was previously agreed upon by the board during the November 26, 2005 board meeting, where San Juan was present. In fact, San Juan did not oppose Atty. Pay's appointment as he only motioned that Ernesto Mangune be made a director even if he is no longer the corporate secretary.

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However, on the transfer of the corporate place of business, this matter is not an ordinary business of the company for it would necessarily involve an amendment of the articles of incorporation. In order for the amendment to be valid, Section 16 of the Corporation Code requires that there be (1) a majority vote of the board of directors and (2) a written assent of the stockholders representing at least 2/3 of the outstanding capital stock, (3) with the corresponding approval by the Securities and Exchange Corporation. Since we already ruled that the reduction of San Juan's shares was invalid, he remains a majority stockholder and his presence and written assent to the proposed transfer of principal place of business is therefore indispensable for the corporate act to be valid. Absent these requirements, we are constrained to set aside the transfer of Aramaywan principal office from Taguig City to Palawan.[48]

All in all, the Court finds the ruling of the CA in its Amended Decision to be in order.

WHEREFORE, the petition is hereby **DENIED**. The Amended Decision dated January 31, 2017 of the Court of Appeals in CA-G.R. CV No. 98934 is therefore **AFFIRMED**.

SO ORDERED.

Peralta, C.J. (Chairperson), Carandang, Zalameda, and *Rosario,*[*] *JJ.*, concur.

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[48] *Rollo*, pp. 68-70.

[*] Additional Member per Raffle dated February 8, 2021.