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Subject only to the Bill of Rights, all efforts should be taken a heavy toll on the lives and future of our people, especially the youth. The campaign must continue with relentless resolve, that the innocent and the weak may be spared from the misery of this malignant affliction.

WHEREFORE, the appeal is *DISMISSED* and the challenged decision *AFFIRMED,* with costs against the accused-appellants.

SO ORDERED.

Narvasa (Chairman), Gancayco, Griño-Aquino, and *Medialdea, JJ.,* concur.

FIRST DIVISION

[G.R. No. 79986. September 14, 1990]

GRANGER ASSOCIATES, *petitioner, vs.* **MICROWAVE SYSTEMS, INC., LORETO F. STEWARD, MENARDO R. JIMENEZ and JOHN PALMER,** *respondents.*

SYLLABUS

1. COMMERCIAL LAW; CORPORATIONS; FOREIGN CORPORATIONS; WHAT CONSTITUTES "DOING BUSINESS IN THE PHILIPPINES." — According to Section 1 of Rep. Act No. 5455 — x x x the phrase "doing business" shall include soliciting orders, purchases, service contracts, opening offices whether called "liaison" offices or branches; appointing representatives or distributors domiciled in the Philippines or who in any calendar year stay in the Philippines for a period or periods totalling one hundred eighty days or more; participating in the management, supervision or control of any domestic business firm, entity or corporation in the Philippines; any other act or acts that imply a continuity of

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commercial dealings or arrangements and contemplates to that extent the performance of acts or works, or the exercise of some of these functions normally incident to, and in progressive prosecution of, commercial gain or of the purpose and object of the business organization. This Court interpreted the same phrase in the old case of *Mentholatum v. Mangaliman* as follows: The true test, however, seems to be whether the foreign corporation is continuing the body or substance of the business or enterprise for which it was organized or whether it has substantially retired from it and turned it over to another. The term implies a continuity of commercial dealings and arrangements, and contemplates, to the extent, the performance of acts or works or the exercise of some of the functions normally incident to, and in progressive prosecution of, the purpose and object of its organization. We have amplified on that discussion in subsequent case among them *Top Weld Manufacturing, Inc. v. ECED, SA.*, where we said: There is no general rule or governing principle laid down as to what constitutes "doing" or "engaging in" or "transacting" business in the Philippines. Each case must be judged in the light of its peculiar circumstances. Thus, a foreign corporation with a settling agent in the Philippines which issued twelve marine policies covering different shipments to the Philippines and a foreign corporation which had been collecting premiums on outstanding policies were regarded as doing business here. The acts of these corporations should be distinguished from a single or isolated business transaction or occasional, incidental and casual transactions which do not come within the meaning of the law. Where a single act or transaction, however, is not merely incidental or casual but indicates the foreign corporation's intention to do other business in the Philippines, said single act or transaction constitutes "doing" or "engaging in" or "transacting" business in the Philippines.

2. ID.; ID.; ID.; A FOREIGN CORPORATION IS DOING BUSINESS IN THE PHILIPPINES WHEN THE TERMS AND CONDITIONS OF THE CONTRACTS IT ENTERED INTO EXPRESSLY SO PROVIDE. — We are convinced from an examination of the terms and conditions of the contracts and agreements entered into between petitioner and private respondents indicate that they established within our country a continuous business, and not merely one of a temporary character. Such agreements did not constitute only one isolated

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transaction, as the petitioner contends, but a succession of acts signifying the intent of Granger to extend its operations in the Philippines.

3. ID.; ID.; ID.; WHEN A SINGLE TRANSACTION MAY BE CONSTRUED AS TRANSACTING BUSINESS IN THE PHILIPPINES. — It is now settled that even one single transaction may be construed as transacting business in the Philippines under certain circumstances, as we observed in *Far East International Import and Export Corporation v. Nankai Kogyo Co., Ltd.,* thus: The rule stated in the preceding section that the doing of a single act does not constitute business within the meaning of statutes prescribing the conditions to be complied with by foreign corporations must be qualified to this extent, that a single act may bring the corporation within the purview of the statute where it is an act of the ordinary business of the corporation. In such a case, the single act or transaction is not merely incidental or casual, but is of such character as distinctly to indicate a purpose on the part of the foreign corporation to do other business in the state, and to make the state a base of operations for the conduct of a part of the corporations' ordinary business.

4. ID.; ID.; ID.; PURPOSE OF THE RULE REQUIRING FOREIGN CORPORATION TO SECURE A LICENSE TO DO BUSINESS IN THE PHILIPPINES. — The purpose of the rule requiring foreign corporations to secure a license to do business in the Philippines is to enable us to exercise jurisdiction over them for the regulation of their activities in this country. If a foreign corporation operates in the Philippines without submitting to our laws, it is only just that it not be allowed to invoke them in our courts when it should need them later for its own protection. While foreign investors are always welcome in this land to collaborate with us for our mutual benefit, they must be prepared as an indispensable condition to respect and be bound by Philippine law in proper cases, as in the one at bar.

APPEARANCES OF COUNSEL

Castillo, Laman, Tan & Pantaleon for petitioner.
Fernando Ma. Alberto for respondents.

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D E C I S I O N

CRUZ, *J.*:

The Court is once again asked to interpret the phrase "doing business in the Philippines" as applied to an unlicensed foreign corporation that has filed a complaint against a domestic corporation.

The foreign corporation is Granger Associates, the herein petitioner, which was organized in the United States and has no license to do business in this country. The domestic corporation is Microwave Systems, Inc., one of the herein private respondents, which has been sued for recovery of a sum equivalent to US$900,633.30 allegedly due from it to the petitioner.

The claim arose from a series of agreements concluded between the two parties, principally the contract dated March 28, 1977, under which Granger licensed MSI to manufacture and sell its products in the Philippines and extended to the latter certain loans, equipment and parts; the contract dated May 17, 1979, for the sale by Granger of its Model 7100/7200 Multiplex Equipment to MSI; and the Supplemental and Amendatory Agreement concluded in December 1979.

Payment of these contracts not having been made as agreed upon, Granger filed a complaint against MSI and the other private respondents on June 29, 1984, in the Regional Trial Court of Pasay City. This was docketed as Civil Case No. 1982-P. In its answer, MSI alleged the affirmative defense that the plaintiff had no capacity to sue, being an unlicensed foreign corporation, and moved to dismiss.

The law invoked by the defendants was Section 133 of the Corporation Code reading as follows:

> No foreign corporation transacting business in the Philippines without a license, or its successors or assigns, shall be permitted to maintain or intervene in any action, suit or proceeding in any court or administrative agency of the Philippines; x x x.

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The trial court, after considering the evidence of the parties in light of their respective memoranda, sustained the defendants and granted the motion to dismiss.[1] On appeal, the order of dismissal was affirmed by the respondent court,[2] prompting the present petition under Rule 45 of the Rules of Court.

In this petition, Granger seeks the reversal of the respondent court on the ground that MSI has failed to prove its affirmative allegation that Granger was transacting business in the Philippines. It insists that it has dealt only with MSI and not the general public and contends that dealing with the public itself is an indispensable ingredient of transacting business. It also argues that its agreements with MSI covered only one isolated transaction for which it did not have to secure a license to be able to file its complaint.

According to Section 1 of Rep. Act No. 5455 —

> x x x the phrase "doing business" shall include soliciting orders, purchases, service contracts, opening offices whether called "liaison" offices or branches; appointing representatives or distributors domiciled in the Philippines or who in any calendar year stay in the Philippines for a period or periods totalling one hundred eighty days or more; participating in the management, supervision or control of any domestic business firm, entity or corporation in the Philippines; any other act or acts that imply a continuity of commercial dealings or arrangements and contemplates to that extent the performance of acts or works, or the exercise of some of these functions normally incident to, and in progressive prosecution of, commercial gain or of the purpose and object of the business organization.

This Court interpreted the same phrase in the old case of *Mentholatum v. Mangaliman*[3] as follows:

> The true test, however, seems to be whether the foreign corporation is continuing the body or substance of the business or enterprise for which it was organized or whether it has substantially retired from it and turned it over to another. (*Traction Cos. v. Collectors*

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[1] Through Judge Nicanor E. Silvano.

[2] Penned by Purisima, *J.*, with Cui and Elbinias, *JJ.*, concurring.

[3] 72 Phil. 524.

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of Int. Revenue [C.C.A. Ohio], 223 F.984, 987.) The term implies a continuity of commercial dealings and arrangements, and contemplates, to the extent, the performance of acts or works or the exercise of some of the functions normally incident to, and in progressive prosecution of, the purpose and object of its organization. (*Griffin v. Implement Dealer's Mut. Fire Ins. Co.*, 241 N.W. 75, 77, *Pauline Oil & Gas Co. v. Mutual Tank Line Co.*, 246 P.851, 852, 118 Okl. 111; *Automotive Material Co v. American Standard Metal Products Corp*., 158 N.E. 698, 703, 327, III. 367.)

We have amplified on that discussion in subsequent case among them *Top Weld Manufacturing, Inc. v. ECED, SA.*,[4] where we said:

> There is no general rule or governing principle laid down as to what constitutes "doing" or "engaging in" or "transacting" business in the Philippines. Each case must be judged in the light of its peculiar circumstances. Thus, a foreign corporation with a settling agent in the Philippines which issued twelve marine policies covering different shipments to the Philippines and a foreign corporation which had been collecting premiums on outstanding policies were regarded as doing business here. The acts of these corporations should be distinguished from a single or isolated business transaction or occasional, incidental and casual transactions which do not come within the meaning of the law. Where a single act or transaction, however, is not merely incidental or casual but indicates the foreign corporation's intention to do other business in the Philippines, said single act or transaction constitutes "doing" or "engaging in" or "transacting" business in the Philippines.

The petitioner contends that its various transactions with the private respondent were mere facets of the basic agreement licensing MSI to manufacture and sell Granger's products in the Philippines. All subsequent agreements were merely auxiliary to that first contract and should not be considered separate transactions coming within the concept of "doing business in the Philippines."

The Supplemental and Amendatory Agreement concluded by Granger and MSI in December 1979 enumerates the various agreements between them thus:

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[4] 138 SCRA 118.

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1. Agreement dated March 28, 1977, under which MSI acquired from GRANGER the right to manufacture, assemble, test, rent and sell, or otherwise deal in certain electronic communications equipment designed and manufactured by GRANGER;

2. Agreement to Purchase Shares dated March 28, 1977 under which GRANGER was granted the option to purchase thirty (30%) percent equity of MSI;

3. Amendatory Agreement dated May 12, 1978, adopting certain amendments to the Agreement dated March 28, 1977 for the purpose of complying with the requirements imposed by the Board of Investments and the Central Bank of the Philippines;

4. Exclusive Distributorship and Marketing Agreement dated May 16, 1978, appointing MSI to handle sale, distribution and promotion of products of GRANGER outside of the Republic of the Philippines;

5. Sales Agency Agreement, dated May 16, 1978, under which MSI was appointed by GRANGER as the latter's exclusive sales representative outside the Philippines to market GRANGER products;

6. Agreement for Purchase of Shares dated May 17, 1978, manifesting the intention of GRANGER to exercise its option to purchase thirty (30%) percent of the issued and outstanding shares of stock of MSI equivalent to a total of 9,000 issued shares of MSI;

7. Model 7100/7200 Multiplex Agreement dated May 17, 1979, prescribing the terms and conditions for the sale by GRANGER of model 7100/7200 Multiplex Equipment to MSI;

8. Technology Transfer Agreement dated May 17, 1979, transferring to and or providing MSI, by virtue of the Model 7100/7200 Multiplex Agreement, the necessary technical services, assistance, manuals, catalogues, sales, literature, *etc*. for the operation of the Model 7100/7200 Multiplex Equipment;

9. Deed of Assignment of Receivables dated October 20, 1979, under which MSI assigned to GRANGER a certain percentage of its receivables from the Philippine Electronics, Inc. in favor of GRANGER to secure payment and performance of MSI's obligations to GRANGER under previous agreements.

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In the Model 7100/7200 Multiplex Equipment Agreement entered into on May 17, 1979, the following stipulations appear:

4. GRANGER shall assign in favor of MSI all orders for the Model 7100/7200 Multiplex Equipment, which have not been filled by GRANGER at the date of the ratification of this Agreement as per paragraph 9 hereof, as described in a list hereto attached and made a part hereof as Annex "C". All proceeds under said orders shall be assigned to and received by MSI and MSI shall take over and assume all obligations which GRANGER may have pursuant to the orders of equipment within a reasonable time following receipt of the shipment of the products by MSI but not to exceed one hundred eighty (180) days from date of said receipt. Any orders GRANGER may receive following the date on which this Agreement becomes effective as provided herein will be forwarded to MSI by GRANGER.

x x x x x x x x x

6. As an additional consideration for the purchase of the products, MSI binds itself to render all equipment support service and maintain reasonable amount of spares inventory for the equipment in the field previously having been sold by GRANGER or by RCA Corporation to their customers for a period of ten (10) years from the date the last sale of GRANGER is recorded. Any amount earned in providing such equipment support shall be billed and received by MSI. Additionally, MSI binds itself to assume the warranty obligations and advance the necessary funds to perform such obligations associated with Model 7100/7200 Multiplex Equipment already sold by GRANGER. However, GRANGER shall reimburse MSI the out-of-pocket cost for the services rendered by MSI in connection with the warranty for the equipment assumed from GRANGER but only to the extent authorized in advance by GRANGER.

A study of the enumeration does support the contention that many of the agreements concluded by the petitioner and the private respondent were intended merely to supplement the basic contract dated March 28, 1977. However, this is not true of the Multiplex agreement dated May 17, 1979, which dealt with a different subject matter and had a different consideration to be paid under a different method from that specified in the first agreement of the parties in 1977. It is also noted that in the supplemental and Amendatory Agreement, Granger sold to MSI

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certain materials/parts for 80 radios and granted it the right to exploit the designs of Model 6015, Series of radio equipment (1.5 Ghz.) and the Plug-In Order Wire, and the 6002 Series and Power Amplifiers. The subject matter of this transaction is also different from those covered by the previous agreements.

Even if it be assumed for the sake of argument that the subject matter of the first contract is of the same kind as that of the subsequent agreements, that fact alone would not necessarily signify that all such agreements are merely auxiliary to the first. As long as it can be shown that the parties entered into a series of agreements, as in successive sales of the foreign company's regular products, that company shall be deemed as doing business in the Philippines.

The quoted stipulations show that Granger had extended its personality in the Philippines and would receive orders for its products and discharge its warranty obligations through the agency of MSI. It would even appear that Granger intended to transact business in the Philippines through the instrumentality of MSI, not only for the sale and warranty of its products in this country. The agency was expected to extend also in mainland China and other ASEAN countries, where MSI was to act as its representative in the development of possible markets for Granger products. Thus it was provided in the Agreement:

6. *OFF-SHORE MANUFACTURING.*

GRANGER undertakes to utilize MSI's manufacturing facilities in the Philippines in preference to any other manufacturer for off-shore manufacture, assembly, fabrication and testing of equipment, sub-assemblies, printed circuit boards and related or allied activities, subject to MSI's demonstrated technical capability and its capacity to comply with normal quality and delivery requirement for such components and as long as such off-shore manufacturing would be to GRANGER's economic advantage.

7. *MAINLAND CHINA AND ASEAN MARKETS.*

Toward maximizing exploitation of export opportunities for the sale of MSI manufactured equipment under license from GRANGER, MSI undertakes to do or perform the following:

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a) MSI, independently or in concert with GRANGER shall develop a marketing strategy towards Mainland China market at its cost or on the basis of shared expense arrangement with GRANGER, agreed between both parties in advance, and shall pursue sales opportunities in that market as it deems warranted. This includes establishing local sales office to manage and monitor direct sales effort as well as appointments of non-exclusive manufacturer's Sales Representatives or non-exclusive Distributors as the case may be;

b) MSI, always in close cooperation with GRANGER, shall develop and pursue direct sales opportunities in the ASEAN market for its own account, always reaching agreement with GRANGER in advance on a case-to-case basis as to the extent of reimbursing GRANGER for its direct or indirect expenses that it might be incurring while acting as an Exclusive Distributor or a Manufacturer's Representative for the licensed equipment in the ASEAN market.

We also note that in the Supplemental and Amendatory Agreement of December 1979, Granger saw to it that it was assured of at least one seat in the board of directors of MSI, "without prejudice to the right of Granger to request additional seats as its interest may require." Granger actually purchased 9,000 shares of MSI, representing 30% of the latter's issued and outstanding shares of stock.[5] The fact that it was directly involved in the business of MSI was also manifested in another stipulation where Granger "acknowledged and confirmed" the transfer of a block of stocks from one shareholder to another group of investors. Such approval is not normally given except by a stockholder enjoying substantial participation in the management of the business of the company.

The said stipulations read as follows:

4. *BOARD OF DIRECTORS.*

GRANGER shall be entitled to one (1) seat in the Board of Directors, with the option to fill said seat at its discretion and instance. GRANGER further interposes no objection to MSI's increasing the

[5] Exhibit "C", Index of Exhibits, p. 14.

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number of its Board of Directors without a corresponding entitlement to an additional seat, without prejudice however to the right of GRANGER to request additional seat as its interest may require.

xxx xxx xxx

8. *CONFIRMATION OF SALE OF SHARES OF STOCK.*

The parties hereto take cognizance of the sale of shares of stock in MSI owned by Vicente C. Sayaon, in his personal capacity and as controlling stockholder of authorized representative of Cosmopolitan Realty Corporation and Visayas Realty and Investment Corporation, in favor of a new group of Filipino entrepreneurs represented in the transaction by Mrs. Remedios Porcuna. The Deed of Sale covering this transaction is incorporated hereto by reference and made an integral part of this Agreement.

Pursuant to the provision embodied in the said Deed of Sale, GRANGER hereby acknowledges and confirms this transaction.

The petitioner cites the regulations of the Board of Investments stating that mere investment in a local company by a foreign corporation should not be construed as doing business in the Philippines.[6] It cannot be denied, however, that the investment of Granger in MSI is quite substantial, enabling it to participate in the actual management and control of MSI. In fact, it appointed a representative in the board of directors to protect its interests, and this director was so influential that, at his request, the regular board meeting was converted into an annual stockholder's meeting to take advantage of his presence.[7]

At any rate, the administrative regulation, which is intended only to supplement the law, cannot prevail against the law itself as the Court has interpreted it. It is axiomatic that the delegate, in exercising the power to promulgate implementing regulations, cannot contradict the law from which the regulations derive their very existence. The courts, for their part, interpret the administrative regulations in harmony with the law that authorized

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[6] *Rollo*, p. 173; Section 1 (g) (9), Rule I of Rules to Implement the Omnibus Investment Code (Pres. Decree No. 1789).

[7] Exhibit "D", Index of Exhibits, p. 15.

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them in the first place and avoid as much as possible any construction that would annul them as an invalid exercise of legislative power.

On the question of whether the foreign corporation must be shown to have dealt with the public in general to be considered as transacting business in the Philippines, the following observations are instructive:

> On the other hand, if a corporation performs acts for which it was created or exercises some of the functions for which it was organized, the amount or volume of the business is immaterial and a single act of that character may constitute doing business. Thus, an engineering consulting firm that had entered into a single contract with a Philippine government agency for the purpose of rendering services for a period of three years as a technical consultant in engineering will be required to obtain a license to do business. Similarly, a foreign company invited to bid for IBRD and ADB international projects in the Philippines will be considered as doing business in the Philippines for which a license is required. In this regard, it is the performance by a foreign corporation of the acts for which it was created, *regardless of volume of business*, that determines whether a foreign corporation needs a license or not. (Italics supplied.)[8]

Finally, this case must be distinguished from *Antam Consolidated, Inc. v. Court of Appeals*,[9] where this Court declared:

> In the case at bar, the transactions entered into by the respondent with the petitioners are not a series of commercial dealings which signify an intent on the part of the respondent to do business in the Philippines but constitute an isolated one which does not fall under the category of "doing business." The records show that the only reason why the respondent entered into the second and third transactions with the petitioners was because it wanted to recover the loss it sustained from the failure of the petitioners to deliver the crude coconut oil under the first transaction and in order to give the latter a chance to make good on their obligation. Instead of making an outright demand on the petitioners, the respondent opted to try

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[8] Tabios, Severiano S., *Fundamentals of Doing Business by a Foreign Corporation in the Philippines*, 142 SCRA 10.

[9] 143 SCRA 288.

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to push through with the transactions to recover the amount of US$103,600.00 it lost. This explains why in the second transaction, the petitioners were supposed to buy back the crude coconut oil they should have delivered to the respondent in an amount which will earn the latter a profit of US$103,600.00. When this failed the third transaction was entered into by the parties whereby the petitioners were supposed to sell crude coconut oil to the respondent at a discounted rate, the total amount of such discount being US$103,600.00. Unfortunately, the petitioners failed to deliver again, prompting the respondent to file the suit below.

From these facts alone, it can be deduced that in reality, there was only one agreement between the petitioners and the respondent and that was the delivery by the former of 500 long tons of crude coconut oil to the latter, who in turn, must pay the corresponding price for the same. The three seemingly different transactions were entered into by the parties only in an effort to fulfill the basic agreement and in no way indicate an intent on the part of the respondent to engage in a continuity of transactions with petitioners which will categorize it as a foreign corporation doing business in the Philippines.

We are convinced from an examination of the terms and conditions of the contracts and agreements entered into between petitioner and private respondents indicate that they established within our country a continuous business, and not merely one of a temporary character. Such agreements did not constitute only one isolated transaction, as the petitioner contends, but a succession of acts signifying the intent of Granger to extend its operations in the Philippines.

In any event, it is now settled that even one single transaction may be construed as transacting business in the Philippines under certain circumstances, as we observed in *Far East International Import and Export Corporation v. Nankai Kogyo Co., Ltd.*,[10] thus:

The rule stated in the preceding section that the doing of a single act does not constitute business within the meaning of statutes prescribing the conditions to be complied with by foreign corporations must be qualified to this extent, that a single act may bring the

[10] 6 SCRA 725.

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corporation within the purview of the statute where it is an act of the ordinary business of the corporation. In such a case, the single act or transaction is not merely incidental or casual, but is of such character as distinctly to indicate a purpose on the part of the foreign corporation to do other business in the state, and to make the state a base of operations for the conduct of a part of the corporations' ordinary business. (17 Fletchers Cyc. of Corporations, Sec. 8470, pp. 572, 573, and authorities cited therein.).

The petitioner stresses that whoever makes affirmative averments has the obligation to prove such averments and points out that the private respondent has not established its allegation that the petitioner is doing business in the Philippines. On the other hand, it is also the rule that the factual findings of the lower court are binding on this Court in the absence of any of those exceptional circumstances we have enumerated in many cases that warrant a different conclusion. Having assailed the finding of the respondent court that the petitioner is doing business in the Philippines, the petitioner had the burden of showing that such finding fell under the exception rather than the rule and so should be reviewed and reversed. The petitioner has not done this.

The purpose of the rule requiring foreign corporations to secure a license to do business in the Philippines is to enable us to exercise jurisdiction over them for the regulation of their activities in this country. If a foreign corporation operates in the Philippines without submitting to our laws, it is only just that it not be allowed to invoke them in our courts when it should need them later for its own protection. While foreign investors are always welcome in this land to collaborate with us for our mutual benefit, they must be prepared as an indispensable condition to respect and be bound by Philippine law in proper cases, as in the one at bar.

WHEREFORE the petition is DENIED, with costs against the petitioner. It is ordered.

Narvasa (Chairman), Gancayco, Griño-Aquino, and *Medialdea, JJ.*, concur.