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raised as issues before the Court of Appeals.[31] We shall not preempt the appellate court on these.

WHEREFORE, the challenged Resolutions dated July 31, 2002 and November 5, 2003 of the Court of Appeals in CA-G.R. SP No. 71764 are *REVERSED* and *SET ASIDE*. The Court of Appeals is *DIRECTED* to reinstate the petition and continue without delay the proceedings as the facts and the law would warrant.

No pronouncement as to costs.

SO ORDERED.

Carpio, Carpio Morales, Tinga, and *Velasco, Jr., JJ.*, concur.

THIRD DIVISION

[G.R. No. 161338. April 27, 2007]

LUZ GARCIA, JUSTO LUKBAN, ALICE ADEVA, MARCEL LUKBAN, WAVA ANN BAYLON, PAMELA ROSANNA APUYA, ALBERTO GARCIA, JR., AIDA FERRER and JANET VENIDA, *petitioners, vs.* **ROMULO M. ADEVA, CEZAR E. ECHANO and LIBRADO GUERRA,** *respondents.*[*]

SYLLABUS

1. MERCANTILE LAW; SECURITIES AND EXCHANGE COMMISSION (SEC); NEW RULES OF PROCEDURE; PRELIMINARY INJUNCTION; MAIN ACTION FOR

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[31] CA *rollo,* p. 6.

[*] The Court of Appeals as respondent, is deleted from the title, pursuant to Section 4, Rule 45 of the Rules of Court.

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INJUNCTION AND PROVISIONAL OR ANCILLIARY REMEDY OF PRELIMINARY INJUNCTION, DISTINGUISHED.— At first glance, it seems obvious that petitioners' action is only to enjoin respondents Adeva, in his capacity as member of the Board of Trustees and President of Mabini, Echano, Lydia E. Cacawa, and Guerra, as Chairmen and Members, respectively of the PBAC of Mabini, "from offering for sale the treasury shares of Mabini College in a bidding to be held for the purpose, on September 4, 1999 at 12:00 noon." *Garayblas v. Atienza, Jr.* is instructive, to wit. Injunction is a judicial writ, process or proceeding whereby a party is ordered to do or refrain from doing a certain act. It may be the main action or merely a provisional remedy for and as an incident in the main action. The Court has distinguished the main action for injunction from the provisional or ancillary remedy of preliminary injunction, thus: The main action for injunction is distinct from the provisional or ancillary remedy of preliminary injunction which cannot exist except only as part or an incident of an independent action or proceeding. As a matter of course, in an action for injunction, the auxiliary remedy of preliminary injunction, whether prohibitory or mandatory may issue. Under the law, the main action for injunction seeks a judgment embodying a final injunction which is distinct from, and should not be confused with the provisional remedy of preliminary injunction the sole object of which is to preserve the *status quo* until the merits can be heard. A preliminary injunction is granted at any stage of an action or proceeding prior to the judgment or final order. It persists until it is dissolved or until the termination of the action without the court issuing a final injunction.

2. ID.; ID.; ID.; SEC CASE NO. 08-99-6398 IS A PRINCIPAL ACTION FOR INJUNCTION, NOT MERELY FOR AN ANCILLIARY REMEDY OF WRIT OF PRELIMINARY INJUNCTION; CASE AT BAR.— Considering the fact that in this case petitioners also prayed that the injunction be made permanent; and considering the allegations in the petition that under Section 9 of the Corporation Code, the power to dispose treasury shares is given to the Board of Directors or Trustees and not to any other Committee created by the Board; that the bidding of treasury shares is a plot by the incumbent President Adeva to corner treasury shares in order to secure majority shareholdings for purposes of corporate control; and that the right of respondents Echano and Guerra to act as Members of

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the Board of the PBAC is "very dubious" because their names, as subsequent buyers of shares, are not recorded in the Stock and Transfer Book of Mabini which has been declared missing and has yet to be reconstituted, the Court is convinced that SEC Case No, 08-99-6398 is a principal action for Injunction, not merely for an ancillary remedy of writ of preliminary injunction, wherein the main issues involved, among others, are: (1) whether the creation of the PBAC by the Board of Trustees is valid under the Corporation Code; (2) whether there was a quorum when the Board of trustees authorized the sale of the treasury shares; and (3) whether respondent Echano and Guerra are *bona fide* shareholders. These issues are not involved in SEC LEO Case No. 95-0005 (EB 496). The latter case is a separate action which involves the annual elections of stockholders and SEC supervision in the procedural matter of corporate injunction as well as the reconstitution of Mabini's stock and transfer books; and the reconstitution is still being undertaken at the time that SEC Case No. 08-99-6398 was filed by petitioners. Thus, SEC Case No. 08-99-6398 cannot even be referred to or consolidated with SEC LEO Case No. 95-0005 (EB 496). It is for the Hearing Panel in SEC Case No. 08-99-6398 to determine whether a final injunction may be issued under the facts and the law of the case.

3. ID.; ID.; THE SEC *EN BANC* ERRED IN DELVING INTO THE QUESTION OF WHETHER THE SALE OF THE TREASURY SHARES LACKED AUTHORITY FROM THE BOARD OF TRUSTEES SINCE PETITIONER'S OMNIBUS MOTION ONLY SOUGHT THE NULLITY OF THE SALE OF THE SUBJECT TREASURY SHARES IN A BIDDING CONDUCTED BY THE PBAC AND TO HOLD RESPONDENTS IN CONTEMPT.— Petitioners' Omnibus Motion sought the nullity of the sale of the treasury shares in a bidding conducted by the PBAC and to hold respondents in contempt. The only reason given by petitioners in claiming that the award of the treasury shares to the winning bidder was null and void is that the bidding was made despite the issuance of a writ of preliminary injunction by the Hearing Panel per its Order dated September 27, 1999. Petitioners also contended that respondents were guilty of indirect contempt for defying said Order. Thus, it is only on these grounds that the Hearing Panel resolved the Omnibus Motion per its Order dated March 13, 2000. Consequently, it was an error for the SEC *En Banc*

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to delve into the question whether the sale of the treasury shares lacked authority from the Board of Trustees, and to further flog the Hearing Panel for allegedly disregarding said issue in resolving the Omnibus Motion.

4. ID.; ID.; ALTHOUGH THE SEC *EN BANC* ORDER GRANTING PETITIONERS' PRELIMINARY INJUNCTION MADE MENTION THAT THE SALE LACKED AUTHORITY FROM THE BOARD OF TRUSTEES, IT ALSO STATED THAT THE SAME WAS MERELY A "*PRIMA FACIE* FINDING" SUBJECT TO CONTRADICTION BY OTHER EVIDENCE THAT MAY BE PRESENTED DURING THE TRIAL ON THE MERITS OF THE MAIN INJUNCTION CASE.— The Court does not subscribe to petitioners' argument that a resolution on the issue of the legality of the corporate act authorizing the bidding sought to be enjoined is essential in the appeal taken by them from the Hearing Panel Resolution dated July 11, 2000 to the SEC *En Banc*. True, as stated by the SEC *En Banc*, that the Order dated September 29, 1999 granting petitioners' application for the issuance of a writ of preliminary injunction made mention that the sale lacked authority from the Board of Trustees. However, as stated by the SEC *En Banc*, it was merely a "*prima facie* finding," *i.e.*, subject to contradiction by other evidence that may be presented during the trial on the merits of the main injunction case.

5. ID.; ID.; ANY CONCLUSIVE RELIANCE ON THE ALLEGED LACK OF AUTHORITY OF THE BOARD OF TRUSTEES WILL, IN EFFECT DISPOSE OF THE CASE ON THE MERITS AND WOULD PREMATURELY PREJUDGE SEC CASE NO. 08-99-6398 WITHOUT AFFORDING THE PARTIES THE OPPORTUNITY TO REBUT SUCH *PRIMA FACIE* FINDING.— It cannot be over emphasized that the lone ground relied upon by the Hearing Panel in denying petitioners' motion to nullify the sale by PBAC of the treasury shares and to hold respondents in indirect contempt is petitioners' failure to timely post a bond. Thus, any conclusive reliance on the alleged lack of authority of the Board of Trustees will, in effect, dispose of the case on the merits and would prematurely prejudge SEC Case No. 08-99-6398 without affording the parties the opportunity to rebut such *prima facie* finding.

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6. ID.; ID.; POSTING OF A BOND IS A CONDITION *SINE QUA NON* IN ORDER THAT THE WRIT OF PRELIMINARY INJUNCTION MAY ISSUE.— The Court sustains the reinstatement of the Hearing Panel's Order dated March 13, 2000. The absence of an injunction bond at the time that the bidding was conducted negates the petitioner's demand for the invalidity of the sale of the treasury shares and to hold petitioners in indirect contempt of court. xxx Also, as stated by the Hearing Panel, the posting of the injunction bond is required by the SEC New Rules of Procedure, to wit: SECTION 1. *Issuance of Preliminary Injunction*.— A preliminary injunction may be granted by the Hearing Officer, **upon bond filed with the Commission to be fixed by the Hearing Officer,** at any time after the commencement of the action and before judgment when it is established after notice and hearing: xxxx A preliminary injunction or TRO may be granted only when, among others, the applicant, unless exempted by the court, files with the court where the action or proceeding is pending, a bond executed to the party or person enjoined, in an amount to be fixed by the court, to the effect that the applicant will pay such party or person all damages which he may sustain by reason of the injunction or TRO if the court should finally decide that the applicant was not entitled thereto. Upon approval of the requisite bond, a writ of preliminary injunction shall be issued. It has been ruled that the posting of a bond is a condition *sine qua non* in order that the writ of preliminary injunction may issue.

APPEARANCES OF COUNSEL

Antonio H. Abad and Associates for petitioners.
Archimedes O. Yanto for respondents.

D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

Assailed in the present Petition for Review on *Certiorari* is the Decision[1] of the Court of Appeals (CA) dated September 18, 2002 nullifying the Resolution dated July 11, 2000 of the

[1] Penned by Associate Justice Elvi John S. Asuncion, with Associate Justices Portia Aliño-Hormachuelos and Juan Q. Enriquez, Jr. concurring; CA *rollo*, pp. 401-410.

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Securities and Exchange Commission (SEC) *En Banc* and reinstating the Order dated March 13, 2000 of the SEC Securities Investigation and Clearing Department's (SICD's) Hearing Panel (Hearing Panel). Also assailed is the CA Resolution dated December 18, 2003, denying petitioners' motion for reconsideration.

The petition stemmed from a dispute between two groups of shareholders within the Mabini College, Inc. (Mabini), with petitioners comprising the Garcia-Lukban group, and respondents, the Adeva group.

Sometime in 1995, petitioners filed SEC LEO Case No. 95-0005 (EB 496), a petition for Annual Elections of Stockholders and SEC Supervision in the Procedural Matter of Corporate Inspection with Mandatory Injunction, wherein a committee was composed for the reconstitution of Mabini's stock and transfer books.

On July 2, 1999, the incumbent Board of Trustees passed a resolution authorizing the sale through bidding of 106 treasury shares of stock of Mabini by its Pre-qualification, Bids and Award Committee (PBAC) on August 9, 1999.[2] The Board agreed during its Special Meeting held on July 13, 1999 to direct the PBAC to send out to all known stockholders invitations to bid for the entire 106 treasury shares for a minimum bulk bid of One Million Eighty One Thousand Two Hundred (₱1,081,200.00) Pesos or Ten Thousand Two Hundred (₱10,200.00) Pesos per share.[3] The bidding, however, was deferred to September 4, 1999.[4]

Thus, petitioners filed on August 31, 1999, SEC Case No. 08-99-6398 seeking to enjoin the scheduled sale, alleging that since 1983, respondent Romulo Adeva (Adeva) intentionally failed to call a stockholders meeting for the election of Mabini's Board of Trustees on the pretext that its stock and transfer books are missing, ensuring his indefinite tenure as President of the corporation. Petitioners prayed that the impending sale be enjoined

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[2] *Id*. at 84-85.

[3] *Id*. at 86.

[4] *Id*. at 87-88.

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on the grounds that the authority given by the Board of Trustees to the PBAC contravenes Section 9 of the Corporation Code which gives the Board of Directors or Trustees the right to dispose said shares for a reasonable price fixed by the Board; that the scheme to bid out the shares is violative of the stockholders' preemptive right to purchase treasury shares; [5] that the stock and transfer book of Mabini has yet to be reconstituted; that as of the date of filing of the petition, there is no official list of stockholders of Mabini; and, that two members of the PBAC, namely: Cesar F. Echano (Echano) and Librado Guerra (Guerra) are not registered stockholders of Mabini. [6]

Then SEC Chairman Perfecto Yasay, Jr. issued a temporary restraining order (TRO) on September 2, 1999 which was extended until September 22, 1999. Hearing on the application for the issuance of a preliminary injunction was set on September 20 and 21, 1999.

On September 23, 1999, after the expiration of the TRO, the PBAC re-scheduled the sale of the shares on September 28, 1999 at 1:00 to 3:00 p.m. [7] But before said date came, the Hearing Panel issued an Order dated September 27, 1999 granting the issuance of a writ of preliminary injunction, and enjoining the sale of the treasury shares, subject to the posting of an injunction bond in the amount of ₱50,000.00. [8]

Attempt was made to serve a copy of the SEC Order in the morning of September 28, 1999, but it was refused by respondents' counsel for the reason that the order was not signed by the majority of the Hearing Panel.[9] The matter was subsequently rectified and at 3:30 p.m. of the same day, the Hearing Panel telefaxed a copy of the signed order but respondents' counsel still refused to receive the same on the ground that

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[5] *Id.* at 55-59.

[6] *Id.* at 57.

[7] *Id.* at 161.

[8] *Rollo*, p. 69.

[9] CA *rollo*, p. 162

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petitioners did not post an injunction bond and that the bidding had already commenced at 1:00 p.m. that day and was already finished,[10] with respondent Guerra as the winning bidder.

As a result, petitioners filed an Omnibus Motion praying that the sale of the treasury shares be nullified and that respondents be cited in indirect contempt.[11]

The Hearing Panel denied petitioners' Omnibus Motion per its Order dated March 13, 2000, finding that there is no ground to nullify the sale or hold respondents in indirect contempt since at the time the sale was held, petitioners had yet to post an injunction bond which was done only on October 8, 1999, or 10 days after the scheduled sale.[12]

Petitioners appealed to the SEC *En Banc*, and in its Resolution dated July 11, 2000, it affirmed the Hearing Panel's finding that respondents may not be held in indirect contempt as the injunction order was released "with some defects," but it nullified the sale of the treasury shares based on the Hearing Panel's "*prima facie*" finding that it lacked authority from Mabini's Board of Trustees.[13]

This prompted respondents to file a petition for review with the CA.

On September 18, 2002, the CA issued the herein assailed Resolution, granting the petition. It nullified the SEC *En Banc*'s Resolution dated July 11, 2000 and reinstated the Hearing Panel's Order dated March 13, 2000.[14] In sustaining the sale of the treasury shares, the CA found that the SEC *En Banc* went beyond the issue of the propriety of granting the writ of preliminary injunction when it annulled the Mabini's board resolution authorizing the sale of the treasury shares. According to the CA, the SEC *En Banc* delved on matters that were not before

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[10] *Id.* at 133.

[11] *Id.* at 110-113.

[12] *Id* at 132-135

[13] *Id.* at 163.

[14] *Rollo,* pp. 53-62.

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it when it ruled that the board of trustees lacked the authority to dispose of the shares, instead of just ruling on whether the Hearing Panel abused its discretion in denying petitioners' Omnibus Motion. The CA further stated that it does not concur with the SEC *En Banc's* ruling that the sale lacked authority from Mabini's board, as it was the board itself which authorized the sale through the PBAC. Lastly, the CA sustained the Hearing Panel's denial of petitioners' Omnibus Motion due to their failure to timely post an injunction bond.[15]

The CA denied petitioners' motion for reconsideration per Resolution dated December 18, 2003.[16]

Petitioners are now before the Court alleging that:

I. THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN FINDING THAT THE SEC DELVED ON MATTERS WHICH WERE NOT LAID BEFORE IT IN THE PETITION FOR *CERTIORARI*.

II. THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ERROR WHEN IT FOUND THAT THE SALE OF TREASURY SHARES DID NOT LACK AUTHORITY FROM THE BOARD OF TRUSTEES

III. THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT UPHELD THE HEARING PANEL'S FINDING THAT THERE IS NO GROUND TO NULLIFY THE BIDDING AND AWARD OF TREASURY SHARES SINCE NO WRIT HAS BEEN ISSUED PREVENTING SUCH BIDDING.[17]

The Petition must be denied.

However, it must first be made clear whether the petition filed by petitioners docketed as SEC Case No. 08-99-6398 is one which seeks only an ancillary remedy or one for Injunction, as a principal action.

The prayer of the Petition reads:

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[15] CA *rollo*, pp. 407-409.

[16] *Rollo*, p. 64.

[17] *Id*. at 24.

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PRAYER

WHEREFORE, the foregoing premises considered, it is most respectfully prayed of this Honorable Commission that:

1. Upon the filing of this petition, a Temporary Restraining Order (TRO) be issued directing respondents, their agents or representatives to cease and desist from offering for sale the treasury shares of Mabini College, Inc. in a bidding to be held for the purpose, on 4 September 1999, at 12:00 noon, at the Case Room of the Mabini College, Daet Camarines Norte.

2. After due proceedings, said injunction be made permanent.

OTHER RELIEFS, just and equitable under the premises are likewise prayed for.[18]

At first glance, it seems obvious that petitioners' action is only to enjoin respondents Adeva, in his capacity as member of the Board of Trustees and President of Mabini, Echano, Lydia E. Cacawa, and Guerra, as Chairmen and Members, respectively of the PBAC of Mabini, "from offering for sale the treasury shares of Mabini College in a bidding to be held for the purpose, on September 4, 1999 at 12:00 noon."

Garayblas v. Atienza, Jr.[19] is instructive, to wit:

Injunction is a judicial writ, process or proceeding whereby a party is ordered to do or refrain from doing a certain act. It may be the main action or merely a provisional remedy for and as an incident in the main action. The Court has distinguished the main action for injunction from the provisional or ancillary remedy of preliminary injunction, thus:

> The main action for injunction is distinct from the provisional or ancillary remedy of preliminary injunction which cannot exist except only as part or an incident of an independent action or proceeding. As a matter of course, in an action for injunction, the auxiliary remedy of preliminary injunction, whether prohibitory or mandatory, may issue. Under the law, the main action for injunction seeks a judgment embodying a final

[18] *Id.* at 93.

[19] G.R. No. 149493, June 22, 2006, 492 SCRA 202.

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> injunction which is distinct from, and should not be confused with, the provisional remedy of preliminary injunction, the sole object of which is to preserve the *status quo* until the merits can be heard. A preliminary injunction is granted at any stage of an action or proceeding prior to the judgment or final order. It persists until it is dissolved or until the termination of the action without the court issuing a final injunction.[20]

Considering the fact that in this case petitioners also prayed that the injunction be made permanent; and considering the allegations in the petition that under Section 9 of the Corporation Code, the power to dispose treasury shares is given to the Board of Directors or Trustees and not to any other Committee created by the Board; that the bidding of treasury shares is a plot by the incumbent President Adeva to corner treasury shares in order to secure majority shareholdings for purposes of corporate control; and that the right of respondents Echano and Guerra to act as Members of the Board of the PBAC is "very dubious" because their names, as subsequent buyers of shares, are not recorded in the Stock and Transfer Book of Mabini which has been declared missing and has yet to be reconstituted,[21] the Court is convinced that SEC Case No. 08-99-6398 is a principal action for Injunction, not merely for an ancillary remedy of writ of preliminary injunction, wherein the main issues involved, among others, are: (1) whether the creation of the PBAC by the Board of Trustees is valid under the Corporation Code; (2) whether there was a quorum when the Board of Trustees authorized the sale of the treasury shares; and (3) whether respondents Echano and Guerra are *bona fide* shareholders. These issues are not involved in SEC LEO Case No. 95-0005 (EB 496). The latter case is a separate action which involves the annual elections of stockholders and SEC supervision in the procedural matter of corporate injunction as well as the reconstitution of Mabini's stock and transfer books; and the reconstitution is still being undertaken at the time that SEC Case No. 08-99-6398 was filed by petitioners. Thus, SEC Case No. 08-99-6398 cannot even be referred to or consolidated with SEC LEO Case

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[20] *Id.* at 217-218.

[21] Petition, Annex "I", *rollo,* p. 92.

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No. 95-0005 (EB 496). It is for the Hearing Panel in SEC Case No. 08-99-6398 to determine whether a final injunction may be issued under the facts and the law of the case.

The issue in the present Petition for Review by *Certiorari* is whether the CA erred in sustaining the Hearing Panel's Order dated March 13, 2000 which denied for lack of merit petitioners' Omnibus Motion to nullify the sale of the subject treasury sales in a bidding conducted by respondents on September 28, 1999.

Attacking the CA Decision, petitioners claim that the CA erred in finding that the SEC *En Banc* delved on matters which were not laid before it in the Petition for *Certiorari* brought by petitioners questioning the denial of the Omnibus Motion by the Hearing Panel.

To know whether the SEC *En Banc* went beyond the issue of the propriety of granting the writ of preliminary injunction in annulling the sale of the treasury shares, a look into the Omnibus Motion filed by petitioners with the Hearing Panel must be made as the Order dated March 13, 2000, denying the Omnibus Motion, is the precursor of the dispute at hand. It is from said motion where it can be determined what were the issues brought up to the SEC *En Banc* for resolution.

Petitioners' Omnibus Motion sought the nullity of the sale of the treasury shares in a bidding conducted by the PBAC and to hold respondents in contempt. The only reason given by petitioners in claiming that the award of the treasury shares to the winning bidder was null and void is that the bidding was made despite the issuance of a writ of preliminary injunction by the Hearing Panel per its Order dated September 27, 1999.[22] Petitioners also contended that respondents were guilty of indirect contempt for defying said Order.[23] Thus, it is only on these grounds that the Hearing Panel resolved the Omnibus Motion per its Order dated March 13, 2000, to wit:

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[22] *Id.* at 113.

[23] *Id*.

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In the record however, is **the petitioners' bond in the amount of ₱50,000.00 pesos posted only on October 08, 1999, or ten (10) days after the scheduled bidding of the shares of stock on September 28, 1999. Indeed, the injunction bond was lately filed rendering the same as moot and academic to enjoin the bidding. Hence, there is no ground to nullify the said proceedings and the result since no writ has been issued preventing such bidding**.

Similarly, and since no bond was immediately posted and no writ was issued, the respondents cannot be charged of committing any act constituting indirect contempt of the Commission. The fact that the September 27, 1999 Order was released with some defects would normally put the respondents and their lawyers on guard, and to then scrutinize the regularity and validity of issuance is just a normal prudence [sic] for every litigants to do. And when the process server finally have [sic] a fax copy of the Order which was validly issued, the same was a *fait accompli* as the bidding was already done.[24] (Emphasis supplied)

Consequently, it was an error for the SEC *En Banc* to delve into the question whether the sale of the treasury shares lacked authority from the Board of Trustees, and to further flog the Hearing Panel for allegedly disregarding said issue in resolving the Omnibus Motion.

The Court does not subscribe to petitioners' argument that a resolution on the issue of the legality of the corporate act authorizing the bidding sought to be enjoined is essential in the appeal taken by them from the Hearing Panel Resolution dated July 11, 2000[25] to the SEC *En Banc*.

True, as stated by the SEC *En Banc*, that the Order dated September 29, 1999 granting petitioners' application for the issuance of a writ of preliminary injunction made mention that the sale lacked authority from the Board of Trustees.[26] However, as stated by the SEC *En Banc*, it was merely a "*prima facie*

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[24] *Id*. at 72.

[25] *Id*. at 29.

[26] *Id*. at 68-69

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finding,"[27] *i.e.*, subject to contradiction by other evidence that may be presented during the trial on the merits of the main injunction case.

It cannot be over emphasized that the lone ground relied upon by the Hearing Panel in denying petitioners' motion to nullify the sale by PBAC of the treasury shares and to hold respondents in indirect contempt is petitioners' failure to timely post a bond. Thus, any conclusive reliance on the alleged lack of authority of the Board of Trustees will, in effect, dispose of the case on the merits and would prematurely prejudge SEC Case No. 08-99-6398 without affording the parties the opportunity to rebut such *prima facie* finding.

Any discussion on the validity of the authority to sell the treasury shares by PBAC is premature. At best, the Hearing Panel's finding on this score is merely preliminary, subject to a final ruling on the main case.

It is in this context that the Court finds that the CA should have refrained from dealing with the validity of the authority to sell the treasury shares. In the assailed Decision, the CA opined that it "cannot subscribe to the view that the sale of treasury shares lacked authority from the board of trustees x x x because it was precisely the board of trustees themselves that authorized the sale of the treasury shares through the PBAC."[28] In effect, the CA went against its own previous ruling that it was grave abuse of discretion on the part of the SEC *En Banc* to resolve the matter.

The Court sustains the reinstatement of the Hearing Panel's Order dated March 13, 2000. The absence of an injunction bond at the time that the bidding was conducted negates the petitioner's demand for the invalidity of the sale of the treasury shares and to hold petitioners in indirect contempt of court.

Sec. 4, Rule 58 of the 1997 Rules of Civil Procedure states:

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[27] *Id.* at 75-76.

[28] CA *rollo*, p. 408.

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Sec. 4. *Verified application and bond for preliminary injunction or temporary restraining order*. — A preliminary injunction or temporary restraining order may be granted only when:

(a) The application in the action or proceeding is verified, and shows facts entitling the applicant to the relief demanded; and

(b) Unless exempted by the court, the applicant files with the court where the action or proceeding is pending, a bond executed to the party or person enjoined, in an amount to be fixed by the court, to the effect that the applicant will pay to such party or person all damages which he may sustain by reason of the injunction or temporary restraining order if the court should finally decide that the applicant was not entitled thereto. **Upon approval of the requisite bond, a writ of preliminary injunction shall be issued**.

x x x (Emphasis supplied).

Also, as stated by the Hearing Panel, the posting of the injunction bond is required by the SEC New Rules of Procedure, to wit:

SECTION 1. *Issuance of Preliminary Injunction*. — A preliminary injunction may be granted by the Hearing Officer, **upon bond filed with the Commission to be fixed by the Hearing Officer**, at any time after the commencement of the action and before judgment when it is established after notice and hearing:

x x x (Emphasis supplied).

A preliminary injunction or TRO may be granted only when, among others, the applicant, unless exempted by the court, files with the court where the action or proceeding is pending, a bond executed to the party or person enjoined, in an amount to be fixed by the court, to the effect that the applicant will pay such party or person all damages which he may sustain by reason of the injunction or TRO if the court should finally decide that the applicant was not entitled thereto. Upon approval of the requisite bond, a writ of preliminary injunction shall be issued.[29] It has been

[29] *Paramount Insurance Corporation v. Court of Appeals*, 369 Phil. 641, 648 (1999).

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ruled that the posting of a bond is a condition *sine qua non* in order that the writ of preliminary injunction may issue.[30]

Furthermore, respondents cannot be faulted for pushing through with the bidding and sale of the treasury shares. As the facts have it, the Order dated September 27, 1999 granting the issuance of a writ of preliminary injunction and enjoining the sale of the treasury shares was served on respondents' counsel in the morning of the scheduled bidding date, September 28, 1999. Respondents' counsel, however, rightly refused to receive the order due to the apparent lack of signatures of the majority of the Hearing Panel. By the time the defect was rectified and the order served on respondents' counsel at 3:30 p.m. of the same day, the bidding had already commenced at 1:00 p.m., as scheduled, and the treasury shares sold to respondent Guerra.[31]

Consequently, the CA is correct in nullifying the SEC *En Banc* Decision and in reinstating the Order dated March 13, 2000 of the Hearing Panel.

WHEREFORE, the petition is *DENIED* for lack of merit.

Costs against petitioners.

SO ORDERED.

Ynares-Santiago (Chairperson), Callejo, Sr., Chico-Nazario, and *Nachura, JJ.,* concur.

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[30] *San Miguel v. Elbinias*, 212 Phil. 291, 297 (1984).

[31] CA *rollo*, p. 133.