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THIRD DIVISION

[G.R. No. 208281; June 28, 2021]

METROPLEX BERHAD and PAXELL INVESTMENT LIMITED, *Petitioners*, *v.* **SINOPHIL CORPORATION, BELLE CORPORATION, DIRECTOR BENITO A. CATARAN, in his capacity as head of the Company Registration and Monitoring Department, DIRECTOR JUSTINA F. CALLANGAN, in her capacity as head of the Corporation Finance Department, ASST. DIRECTOR FERDINAND B. SALES, in his capacity as Head of Corporate and Partnership Registration Division, ASST. DIRECTOR YOLANDA L. TAPALES, in her capacity as Head of the Financial Analysis and Audit Division, and JOHN DOES,** *Respondents*.

D E C I S I O N

HERNANDO, *J.*:

This Petition for Review on *Certiorari*[1] with Application for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction seeks the reversal of the January 29, 2013 Decision[2] and July 17, 2013 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 107942.

The appellate court affirmed *in toto* the February 26, 2009 Order[4] of the Securities and Exchange Commission (SEC) *En*

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[1] *Rollo*, Vol., pp. 17-81.

[2] Id. at 83-97; penned by Associate Justice Rebecca De Guia-Salvador and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Samuel H. Gaerlan (now a Member of the Court).

[3] Id. at 99.

[4] Id. at 147-159; penned by Chairperson Fe B. Barin and concurred in by Commissioners Ma. Juanita E. Cueto and Thaddeus E. Venturanza. Commissioners Jesus Enrique G. Martinez and Raul J. Palabrica were on sick leave and official travel leave, respectively.

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Banc finding no error in its Operating Departments' approval of the reduction of Sinophil Corporation's (Sinophil) capital stock.

The Antecedents:

Petitioner Metroplex Berhad (Metroplex) is a corporation in liquidation duly organized and existing under and by virtue of the laws of Malaysia, while petitioner Paxell Investment Limited (Paxell) is a corporation duly organized and existing under and by virtue of the laws of Western Somoa. Both Metroplex and Paxell have their principal offices at Kuala Lumpur, Malaysia.[5]

On the other hand, respondent Sinophil is a publicly-listed corporation duly organized and existing under and by virtue of the laws of the Philippines with principal office at Pasig City, Philippines. Respondent Belle Corporation (Belle) is another publicly-listed corporation duly organized and existing under and by virtue of the laws of the Philippines with principal office also at Pasig City.[6]

The other individual respondents are the SEC Directors, Assistant Directors, and officers of the SEC who caused, facilitated, implemented, and approved the questioned actions of the Operating Departments of the SEC. These Operating Departments included the Company Registration and Monitoring Department (CRMD); the Corporation Finance Department (CFD); the Corporate and Partnership Registration Division (CPRD); and the Financial Analysis and Audit Division (FAAD) of the SEC.[7]

The Antecedents:

In August 1998, Sinophil entered into a Share Swap Agreement (Swap Agreement) with Metroplex and Paxell. Under the Swap Agreement, Metroplex and Paxell would transfer 40% of their shareholdings in Legend International Resorts Limited (Legend) for a combined 35.5% stake in Sinophil.[8]

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[5] Id. at 20.

[6] Id.

[7] Id. at 20-21.

[8] Id. at 22.

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In their Comment/Opposition,[9] however, Sinophil and Belle alleged that the Swap Agreement was entered into in March 1997. Pursuant to the Swap Agreement, Sinophil issued 2.41 billion shares to Metroplex and 1.45 billion shares to Paxell, totaling 3.87 billion shares in exchange for 46.38 million shares of Legend which were transferred by the Metroplex Group (Metroplex and Paxell) to Sinophil's name.

In the interim, Metroplex pledged two billion of its Sinophil shares with Union Bank and Asian Bank to secure the loans of Legend with the said banks.[10]

The following pertinent sequence of events followed:

On August 23, 2001, Sinophil and Belle executed a Memorandum of Agreement (Unwinding Agreement) with Metroplex and Paxell rescinding the 1998 Swap Agreement. After the execution of the Unwinding Agreement, Metroplex and Paxell were unable to return 1.87 billion of the Sinophil shares while another two billion Sinophil shares remained pledged by Metroplex in favor of International Exchange Bank and Asian Bank.[11]

On February 18, 2002 and June 3, 2005, the shareholders of Sinophil voted for the reduction of Sinophil's authorized capital stock.[12]

On March 28, 2006, the CRMD and the CFD approved the first amendment of the Articles of Incorporation of Sinophil, reducing its authorized capital stock by 1.87 billion shares. The following day, or on March 29, 2006, the approval of the reduction of Sinophil's authorized capital stock was disclosed to the Philippine Stock Exchange, Inc. (PSE).[13]

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[9] *Rollo*, Vol. II, pp. 1077-1099.

[10] *Rollo*, Vol. I, p. 22.

[11] Id.

[12] Id. at 23.

[13] Id. at 24.

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On June 21, 2007, the shareholders of Sinophil again approved the proposal of the Board of Directors to reduce its authorized capital stock by another one billion shares.[14]

On June 24, 2008, the CRMD and the CFD approved the second amendment of the Articles of Incorporation of Sinophil which further reduced its authorized capital stock by one billion shares. On June 30, 2008, the approval of the reduction of Sinophil's authorized capital stock was likewise disclosed to the PSE.[15]

On July 21, 2008, petitioners Yaw Chee Cheow (Yaw), Metroplex and Paxell filed a Petition for Review *Ad Cautelam Ex Abundanti*[16] before the SEC assailing the approval by the CRMD and the CFD of the amendments by Sinophil of its Articles of Incorporation. Petitioners claimed that:

1. They opposed the decrease of the authorized capital stock;

2. They were not given the opportunity to be heard by the CFD;

3. The reduction was approved by the CRMD and CFD despite the lack of more than two-thirds (2/3) approval of the Sinophil shareholders;

4. The decrease in the authorized capital stock of Sinophil violated the legal requirement that a corporation cannot reduce its issued capital unless it has unrestricted retained earnings;

5. The decreases involved the "selective reduction" of Sinophil's authorized capital stock which resulted in the diminution of the shareholdings of petitioner Yaw and other shareholders of Sinophil, and the return of the investments of petitioners Metroplex and Paxell ahead of Yaw and other shareholders of Sinophil;

6. The selective reduction entailed the assumption and payment of loans secured by Metroplex and Paxell's Sinophil shares, to the prejudice of Sinophil and its shareholders including petitioner Yaw.[17]

Thus, the following three issues were raised by the petitioners:

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[14] Id. at 24-25.

[15] Id. at 24.

[16] Id. at 160-199.

[17] Id.

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1. Whether the actions of the CRMD and the CFD allowing the reduction of the outstanding capital stock of Sinophil authorized the "selective" reduction of its issued capital;

2. Whether such "selective" reduction had complied with all relevant and procedural requirements and could be legally done through the cancellation and delisting of the 3.87 billion Sinophil shares of Metroplex and Paxell over the objection of the petitioners; and

3. Whether the questioned actions of the CRMD and the CFD constitute grave reversible errors or abuse of discretion amounting to lack or excess of jurisdiction which should be set aside and declared null and void.[18]

On the other hand, private and public respondents claimed, among others, that there was full compliance with Section 38 of the Corporation Code by the submission of all the requirements and that there was a presumption of regularity in the performance of public respondents' duties.[19]

Ruling of the Securities and Exchange Commission:

The SEC was confronted with these issues for resolution:

1. Whether the decrease of the capital stock of Sinophil Corporation was validly allowed by the CRMD and the CFD; and

2. Whether the issuance of a cease and desist order is in order.[20]

On February 26, 2009, the SEC issued its assailed Order[21] denying petitioners' Petition for Review *Ad Cautelam Ex Abundanti* and essentially affirming the acts of the CRMD and CFD regarding the decrease in the capital stock of Sinophil.

The SEC found that the decrease in capital stock complied with the requirements imposed by the Corporation Code,

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[18] Id. at 177.

[19] *See* Comment/Opposition of Sinophil and Bell; id. at 246-270; Comment of Justina F. Callangan, id. at 271-276.

[20] Id. at 151.

[21] Id. at 147-159.

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particularly Section 38. It held that the equal or unequal reduction of a corporation's capital stock is a matter solely between the stockholders and cannot be enjoined either by the courts or the creditors.[22]

Moreover, the SEC found no basis to grant the prayer for the issuance of a cease and desist order. Petitioners failed to raise valid grounds for its issuance. The Commission held that a cease and desist order could not be ultimately issued because the grave and irreparable danger to the investing public that petitioners fear is not present in the case.[23]

The dispositive portion of the Order of the SEC reads as follows:

WHEREFORE, premises considered, the Petition for Review with Prayer for the Issuance of a Cease and Desist Order is DENIED.

SO ORDERED.[24]

Aggrieved, petitioners appealed before the CA raising the following alleged errors in the SEC's ruling:

1. The SEC committed serious and manifest errors in affirming the actions of its respondent Operating Departments (CRMD, CFD, CPRD and FAAD) which approved the reduction of the authorized capital stock of private respondent Sinophil through the selective reduction of the latter's issued capital;

2. The SEC committed serious and manifest errors in ruling that the selective reduction of the issued capital of private respondent Sinophil complied with all relevant legal and procedural requirements; and

3. The SEC committed serious and manifest errors in denying the application of petitioners for a cease and desist order against the respondents.[25]

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[22] Id. at 154.

[23] Id. at 158.

[24] Id. at 159.

[25] CA *rollo*, p. 44.

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Ruling of the Court of Appeals:

On January 29, 2013, the CA promulgated its Decision[26] which upheld the findings of the SEC, *viz.*:

> WHEREFORE, considering the foregoing, the petition is DENIED. The assailed Order dated February 26, 2009 of the Securities and Exchange Commission in Case No. EB 07-08-137 is hereby AFFIRMED *in toto*.
>
> SO ORDERED.[27]

On July 17, 2013, the CA issued a Resolution[28] denying petitioners' motion for reconsideration for lack of merit as all the issues raised were a mere rehash of the arguments already passed upon.[29]

Issues

In their Petition for Review on *Certiorari*[30] filed with the Court, petitioners raised the following arguments:

> 1. The challenged Decision and the challenged Resolution of the CA should be reversed and set aside for being contrary to law and jurisprudence, considering that the CA was not proscribed from reviewing such findings of public respondents' Operating Departments and in fact, such findings are not supported by substantial evidence;
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> 2. The challenged Decision, as affirmed by the challenged Resolution, of the CA should be reversed and set aside for being contrary to law and jurisprudence, considering that the SEC has the jurisdiction to review the actions of public respondents Operating Departments in approving the reduction of the authorized capital stock of private respondent Sinophil through the selective reduction of the latter's issued capital;
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> 3. The challenged Decision, as affirmed by the challenged Resolution, of the CA should be reversed and set aside for being contrary to law and jurisprudence, considering that private respondent Sinophil failed

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[26] *Rollo*, Vol. I, pp. 83-97.

[27] Id. at 97.

[28] Id. at 99.

[29] Id.

[30] Id. at 17-50.

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to comply with the requirements of the law and the SEC, particularly notice and hearing and prior approval of all of the shareholders and, in fact, violated the Trust Fund Doctrine;

4. The petitioners are entitled to the application for injunctive relief against the respondents as prayed under the instant petition.[31]

Ultimately, the main issue raised by petitioners is whether or not the appellate court correctly affirmed *in toto* the Order of the SEC.

Our Ruling

The Court denies the Petition.

The appellate court is correct in finding that the decrease in respondent Sinophil's capital stock was legal and that the public respondent SEC's approval thereof was proper.

Section 38 of the Corporation Code clearly lists down the requirements for a corporation to decrease its capital stock.

Petitioners have been asserting from the beginning that private respondent Sinophil failed to comply with the following legal requirements for a decrease in its authorized capital stock: (a) notice and hearing; (b) approval of all stockholders; (c) legitimate business purposes; and (d) approval of all creditors.

The Court agrees with the appellate court's rejection of petitioners' contentions considering that the legal provisions they cited, *i.e.*, Section 13 of the Securities Regulation Code, the SEC Opinions, and the Trust Fund Doctrine, do not apply to the case at bar. What applies instead is Section 38 of the Corporation Code, the pertinent portions of which provide:

Sec. 38. *Power to increase or decrease capital stock; incur, create or increase bonded indebtedness*. – **No corporation shall** increase or **decrease its capital stock** or incur, create or increase any bonded indebtedness **unless approved by a majority vote of the board**

[31] Id. at 30-31.

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of directors, and at a stockholder's meeting duly called for the purpose, two-thirds (2/3) of the outstanding capital stock shall favor the increase or **diminution** of the capital stock, or the incurring, creating or increasing of any bonded indebtedness. **Written notice of the proposed** increase or **diminution** of the capital stock or of the incurring, creating, or increasing of any bonded indebtedness **and of the time and place of the stockholders' meeting at which the proposed** increase or **diminution** of the capital stock or the incurring or increasing of any bonded indebtedness **is to be considered, must be addressed to each stockholder at his place of residence as shown on the books of the corporation and deposited to the addressee in the post office with postage prepaid, or served personally**.

A certificate in duplicate must be signed by a majority of the directors of the corporation and countersigned by the chairman and the secretary of the stockholders' meeting, setting forth:

(1) **That the requirements of this section have been complied with**;

(2) **The amount of the** increase or **diminution of the capital stock**;

(3) x x x;

(4) x x x;

(5) **The actual indebtedness of the corporation on the day of the meeting**;

(6) **The amount of stock represented at the meeting**; and

(7) **The vote authorizing** the increase or **diminution** of the capital stock, or the incurring, creating or increasing of any bonded indebtedness.

Any increase or **decrease** in the capital stock or the incurring, creating or increasing of any bonded indebtedness **shall require prior approval of the Securities and Exchange Commission**.

One of the duplicate certificates shall be kept on file in the office of the corporation and the other shall be filed with the Securities and Exchange Commission and attached to the original articles of incorporation. From and after approval by the Securities and Exchange Commission and the issuance by the Commission of its certificate of filing, the capital stock shall stand increased or decreased and the incurring, creating or increasing of any bonded indebtedness authorized, as the certificate of filing may declare: Provided, That the Securities and Exchange Commission shall not accept for filing any certificate of increase of capital stock unless accompanied by the sworn statement

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of the treasurer of the corporation lawfully holding office at the time of the filing of the certificate, showing that at least twenty-five (25%) percent of such increased capital stock has been subscribed and that at least twenty-five (25%) percent of the amount subscribed has been paid either in actual cash to the corporation or that there has been transferred to the corporation property the valuation of which is equal to twenty-five (25%) percent of the subscription: **Provided, further, That no decrease of the capital stock shall be approved by the Commission if its effect shall prejudice the rights of corporate creditors.**

x x x x (Emphasis supplied)

Section 38 is clear. A corporation can only decrease its capital stock if the following are present:

1. Approval by a majority vote of the board of directors;
2. Written notice of the proposed diminution of the capital stock, and of the time and place of a stockholders' meeting duly called for the purpose, addressed to each stockholder at his place of residence;
3. 2/3 of the outstanding capital stock voting favorably at the said stockholders' meeting duly;
4. Certificate in duplicate, signed by majority of the directors and countersigned by the chairman and secretary of the stockholders' meeting stating that legal requirements have been complied with;
5. Prior approval of the SEC; and
6. Effects do not prejudice the rights of corporate creditors.

The list of requirements under Section 38 is altogether different from the list of legal requirements presented by petitioners. In short, petitioners plainly did not comply with the law. The Court agrees with the appellate court when it held that:

We reject petitioners' contentions as they do not even cite any particular rule wherein notice and hearing is required before approval for the increase or decrease in the capital stock is granted or denied. The provision cited by petitioners in their brief, Section 13 of RA 8799, is not even appropriate as it refers to the rejection or revocation

of the registration of securities, on any of the grounds stated in said section, none of which obtains in the case at bar. There is likewise no validity nor legal basis to the allegation that prior approval of all the stockholders is required for the reduction in capital stock. Suffice it to state that under Section 38 of the Corporation Code, **such decrease only requires the approval of a majority of the board of directors and, at a stockholder's meeting duly called for the purpose, two-thirds (2/3) vote of the outstanding capital stock. So long as written notice of the proposed increase or diminution of the capital stock was made to all stockholders, the presence and approval of at least 2/3 of the capital stock is enough to make the increase or diminution valid. This is the plain language of the provision over which no other interpretation may be made.** [32] (Emphasis supplied)

Here, a judicious perusal of the records of the case reveals that Sinophil submitted to the SEC the following documents in support of its application for the decrease of its authorized capital stock and in full compliance with the requirements laid down under Section 38:

1. Certificate of Decrease of Capital Stock;

2. Director's Certificate;

3. Amended Articles of Incorporation;

4. Audited Financial Statements as of the last fiscal year stamped and received by the Bureau of Internal Revenue and the SEC (as of December 31, 2004 and 2007);

5. Long Form Audit Report of the Audited Financial Statements (as of December 31, 2004 and 2007);

6. List of Creditors (Schedule of Liabilities as of December 31, 2004 and 2007), as certified by the Accountant;

7. Written consent of Creditors;

8. Notice of Decrease of Capital; and

9. Affidavits of Publication of the Notice of Decrease of Capital.[33]

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[32] Id. at 94.

[33] *Rollo*, Vol. III, pp. 1112-1113.

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Three stockholders' meeting were likewise held on February 18, 2002, June 3, 2005 and June 21, 2007 where the stockholders voted for the reduction of the corporation's authorized capital stock.

SEC only has the ministerial duty to approve the decrease of a corporation's authorized capital stock.

After a corporation faithfully complies with the requirements laid down in Section 38, the SEC has nothing more to do other than approve the same. Pursuant to Section 38, the scope of the SEC's determination of the legality of the decrease in authorized capital stock is confined only to the determination of whether the corporation submitted the requisite authentic documents to support the diminution. Simply, the SEC's function here is purely administrative in nature.

In *Ong Yong v. Tiu*,[34] the Court held that decreasing a corporation's authorized capital stock, which is an amendment of the corporation's Articles of Incorporation, is a decision that only the stockholders and the directors can make, considering that they are the contracting parties thereto. For third persons or parties outside the corporation like the SEC to interfere to the decrease of the capital stock without reasonable ground is a violation of the "business judgment rule" which states that:

> [C]ontracts *intra vires* entered into by the board of directors are binding upon the corporation and courts will not interfere unless such contracts are so unconscionable and oppressive as to amount to wanton destruction to the rights of the minority, as when plaintiffs aver that the defendants (members of the board), have concluded a transaction among themselves as will result in serious injury to the plaintiffs stockholders.

The reason behind the rule is aptly explained by Dean Cesar L. Villanueva, an esteemed author in corporate law, thus:

> Courts and other tribunals are wont to override the business judgment of the board mainly because, courts are not in the

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[34] 448 Phil. 860-894 (2003).

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> business of business, and the *laissez faire* rule or the free enterprise system prevailing in our social and economic set-up dictates that it is better for the State and its organs to leave business to the businessmen; especially so, when courts are ill-equipped to make business decisions. More importantly, the social contract in the corporate family to decide the course of the corporate business has been vested in the board and not with the courts.[35]

The "business judgment rule" simply means that "the SEC and the courts are barred from intruding into business judgments of corporations, when the same are made in good faith."[36]

Furthermore, the SEC is not vested by law with any power to interpret contracts and interfere in the determination of the rights between and among a corporation's stockholders. Neither can the SEC adjudicate on the contractual relations among these same stockholders. Thus, petitioners' allegation that it is the SEC that should determine the parties' rights under the contracts executed, particularly the Swap Agreement, the Unwinding Agreement, and the general proxy, has no basis. To stress, the SEC's only function here was to determine the corporation's compliance with the formal requirements under Section 38 of Corporation Code.

The issuance of an injunctive relief of temporary restraining order (TRO) is not warranted.

Section 3, Rule 58 of the Rules of Court provides that a TRO may be granted only when:

(a) The applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;

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[35] Id., citing Cesar L. Villanueva, *Philippine Corporate Law*, 1998 Ed., p. 228.

[36] *Philippine Stock Exchange, Inc. v. Court of Appeals*, 346 Phil. 218-240 (1997).

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(b) The commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or

(c) The party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

Petitioners argue that unless the questioned act of respondents of irregularly or illegally reducing Sinophil's issued capital stock is restrained permanently, "the same will operate as a fraud on investors such as the Petitioners and will also likely cause grave or irreparable injury or prejudice to the investing public."[37]

The Court disagrees.

The alleged fraud as well as the grave or irreparable injury or prejudice to the investing public are not present in the case.

Firstly, there is no fraudulent act committed by respondents as has been held by both the CA and this Court, as discussed above.

Secondly, petitioners failed to show how the investing public would be prejudiced by the decrease and delisting in view of its disclosure to the PSE.

Disclosure of corporate actions to the stock exchange is intended to apprise the investing public of the condition and planned corporate actions of the listed corporation, thereby providing investors with sufficient, relevant and material information as to the nature of the investment vehicle and the relationship of the risks and returns associated with it.[38] The corporation's simple act of disclosing the decrease and delisting to the PSE was more than enough notice to the investing public. There was nothing in the corporation's act that resulted in grave or irreparable injury or prejudice to the investing public.

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[37] *Rollo*, Vol. I, p. 48.

[38] Id. at 158-159.

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WHEREFORE, the Petition for Review on *Certiorari* with Application for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction is **DENIED**.

SO ORDERED.

Leonen (Chairperson), Inting, Delos Santos, and *J. Lopez, JJ.*, concur.

APPEARANCES OF COUNSEL

Picazo Buyco Tan Fider & Santos for petitioners.
Tan Venturanza Valdez for respondents Sinophil & Belle.
Office of the Solicitor General for public respondents.