Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

EXPRESS INVESTMENTS III PRIVATE LTD. AND EXPORT DEVELOPMENT CANADA,
Petitioners,

G.R. Nos. 174457-59

- versus -

BAYAN TELECOMMUNICATIONS, INC., THE BANK OF NEW YORK (AS TRUSTEE FOR THE HOLDERS OF THE US$200,000,000 13.5% SENIOR NOTES OF BAYAN TELECOMMUNICATIONS, INC.) AND ATTY. REMIGIO A. NOVAL (AS THE COURT-APPOINTED REHABILITATION RECEIVER OF BAYANTEL),
Respondents.

x- -x

IN THE MATTER OF:

G.R. Nos. 175418-20

THE CORPORATE REHABILITATION OF BAYAN TELECOMMUNICATIONS, INC. PURSUANT TO THE INTERIM RULES OF PROCEDURE ON CORPORATE REHABILITATION (A.M. NO. 00-8-10-SC)

THE BANK OF NEW YORK AS TRUSTEE FOR THE HOLDERS OF THE US$200,000,000 13.5% SENIOR NOTES OF BAYAN TELECOMMUNICATIONS, INC.

DUE 2006 ACTING ON THE INSTRUCTIONS OF THE INFORMAL STEERING COMMITTEE: AVENUE ASIA INVESTMENTS, L.P., AVENUE ASIA INTERNATIONAL, LTD., AVENUE ASIA SPECIAL SITUATIONS FUND II, L.P. AND AVENUE ASIA CAPITAL PARTNERS, L.P.,
Petitioners,

- versus -

BAYAN TELECOMMUNICATIONS, INC.,
Respondent.
x----------x

IN THE MATTER OF:

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AVENUE ASIA INVESTMENTS, L.P., AVENUE ASIA INTERNATIONAL, LTD., AVENUE ASIA SPECIAL SITUATIONS FUND II, L.P., AVENUE ASIA CAPITAL PARTNERS, L.P. AND AVENUE ASIA SPECIAL SITUATIONS FUND III, L.P.
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THE BANK OF NEW YORK AS TRUSTEE FOR THE HOLDERS OF THE US$200,000,000 13.5% SENIOR NOTES OF BAYAN TELECOMMUNICATIONS, INC.,
Petitioner,

- versus -

BAYAN TELECOMMUNICATIONS, INC.,
Respondent.

G.R. No. 177270

Present:

LEONARDO-DE CASTRO,
Acting Chairperson,
BERSAMIN,
VILLARAMA, JR.,
PEREZ,* and
REYES, *JJ.*

Promulgated:

DEC 05 2012

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DECISION

VILLARAMA, JR., *J.*:

Before us are seven consolidated petitions for review on certiorari filed in connection with the corporate rehabilitation of Bayan Telecommunications, Inc. (Bayantel).

The Petition for Partial Review on Certiorari[1] in G.R. Nos. 174457-59 was filed by Express Investments III Private Ltd. and Export Development Canada to assail the August 18, 2006 Decision[2] of the Court of Appeals in CA-G.R. SP No. 87203.

On the other hand, the Petition for Review on Certiorari[3] in G.R. Nos. 175418-20 was filed by The Bank of New York; Avenue Asia Investments, L.P.; Avenue Asia International, Ltd.; Avenue Asia Special Situations Fund II, L.P.; Avenue Asia Capital Partners, L.P. and Avenue Asia Special Situations Fund III, L.P. Said petition questions as well the said August 18, 2006 Court of Appeals Decision, and also the November 8, 2006 Resolution[4] of the Court of Appeals in CA-G.R. SP Nos. 87100 and 87111 affirming the June

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* Designated additional member per Special Order No. 1385 dated December 4, 2012.
1 *Rollo* (G.R. Nos. 174457-59), Vol. I, pp. 16-141.
2 Id. at 188-219. Penned by Associate Justice Vicente Q. Roxas with Presiding Justice Ruben T. Reyes (now a retired member of this Court) and Associate Justice Rebecca De Guia-Salvador concurring.
3 *Rollo* (G.R. Nos. 175418-20), Vol. I, pp. 49-123.
4 Id. at 45-46.

28, 2004 Decision[5] of the Regional Trial Court (RTC) of Pasig City, Branch 158, in SEC Case No. 03-25.

Meanwhile, the Petition for Review on Certiorari[6] in G.R. No. 177270 was filed by The Bank of New York, in its capacity as trustee for the holders of the US$200 million 13.5% Senior Notes of Bayantel and upon the instructions of the Informal Steering Committee, to contest the Decision[7] and Resolution[8] of the Court of Appeals in CA-G.R. SP No. 89894 which nullified the November 9, 2004 and March 15, 2005 Orders of the Pasig RTC, Branch 158, in SEC Case No. 03-25 insofar as it defined the powers and functions of the Monitoring Committee.

The facts, as culled from the records of these cases, follow:

Respondent Bayantel is a duly organized domestic corporation engaged in the business of providing telecommunication services. It is 98.6% owned by Bayan Telecommunications Holdings Corporation (BTHC), which in turn is 85.4% owned by the Lopez Group of Companies and Benpres Holdings Corporation.

On various dates between the years 1995 and 2001, Bayantel entered into several credit agreements with Express Investments III Private Ltd. and Export Development Canada (petitioners in G.R. Nos. 174457-59), Asian Finance and Investment Corporation, Bayerische Landesbank (Singapore Branch) and Clearwater Capital Partners Singapore Pte Ltd., as agent for Credit Industriel et Commercial (Singapore), Deutsche Bank AG, Equitable PCI Bank, JP Morgan Chase Bank, Metropolitan Bank and Trust Co., P.T. Bank Negara Indonesia (Persero), TBK, Hong Kong Branch, Rizal Commercial Banking Corporation and Standard Chartered Bank. To secure said loans, Bayantel executed an Omnibus Agreement dated September 19,

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5 Id. at 1014-1029. Penned by Judge Rodolfo R. Bonifacio.
6 *Rollo* (G.R. No. 177270), Vol. I, pp. 47-140.
7 Id. at 12-37. The decision is dated October 27, 2006. Penned by Associate Justice Rebecca De Guia-Salvador with Associate Justices Magdangal M. de Leon and Ramon R. Garcia concurring.
8 Id. at 39-42. The resolution is dated March 23, 2007.

1995 and an EVTELCO Mortgage Trust Indenture[9] dated December 12, 1997.[10]

Pursuant to the Omnibus Agreement, Bayantel executed an Assignment Agreement in favor of the lenders under the Omnibus Agreement (hereinafter, Omnibus Creditors, Bank Creditors, or secured creditors). In the Assignment Agreement, Bayantel bound itself to assign, convey and transfer to the Collateral Agent, the following properties as collateral security for the prompt and complete payment of its obligations to the Omnibus Creditors:

> (i) all monies payable to Bayantel under the Project Documents (as the term is defined by the Omnibus Agreement);
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> (ii) all Project Documents and all Contract Rights arising thereunder;
>
> (iii) all receivables;
>
> (iv) all general intangibles;
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> (v) each of the Accounts (as the term is defined by the Omnibus Agreement);
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> (vi) all amounts maintained in the Accounts and all monies, securities and instruments deposited or required to be deposited in the Accounts;
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> (vii) all other chattel paper and documents;
>
> (viii) all other property, assets and revenues of Bayantel, whether tangible or intangible; and
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> (ix) all proceeds and products of any and all of the foregoing.[11]

In July 1999, Bayantel issued US$200 million worth of 13.5% Senior Notes pursuant to an Indenture[12] dated July 22, 1999 that it entered into with The Bank of New York (petitioner in G.R. Nos. 175418-20) as trustee for the holders of said notes. Pursuant to the said Indenture, the notes are due in 2006 and Bayantel shall pay interest on them semi-annually. Bayantel managed to make two interest payments, on January 15, 2000 and July 15,

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9 A written agreement under which bonds and debentures are issued, setting forth maturity date, interest rate, and other terms. BLACK'S LAW DICTIONARY 693 (5th ed., 1979).

10 CA *rollo*, Vol. II, pp. 38-39.

11 Id. at 39-40.

12 *Rollo* (G.R. Nos. 174457-59), Vol. I, pp. 402-570.

2000, before it defaulted on its obligation.

Foreseeing the impossibility of further meeting its obligations, Bayantel sent, in October 2001, a proposal for the restructuring of its debts to the Bank Creditors and the Holders of Notes. To facilitate the negotiations between Bayantel and its creditors, an Informal Steering Committee was formed composed of Avenue Asia Investments, L.P., Avenue Asia International, Ltd., Avenue Asia Special Situations Fund II, L.P., Avenue Asia Capital Partners, L.P. (petitioners in G.R. Nos. 175418-20) and Van Eck Global Opportunity Masterfund, Ltd. The members of the Informal Steering Committee are the assignees of the unsecured credits extended to Bayantel by J.P. Morgan Europe, Ltd., Bayerische Landesbank Singapore Branch and Deutsche Bank AG, London in the total principal amount of US$13,637,485.20. They are holders, as well, of the Notes issued by Bayantel pursuant to the Indenture dated July 22, 1999.

In its initial proposal called the "First Term Sheet," Bayantel suggested a 25% write-off of the principal owing to the Holders of Notes. The Informal Steering Committee rejected the idea, but accepted Bayantel's proposal to pay the restructured debt, *pari passu*,[13] out of its cash flow. This *pari passu* or equal treatment of debts, however, was opposed by the Bank Creditors who invoked their security interest under the Assignment Agreement.

Bayantel continued to pay reduced interest on its debt to the Bank Creditors but stopped paying the Holders of Notes starting July 17, 2000. By May 31, 2003, Bayantel's total indebtedness had reached US$674 million or ₱35.928 billion in unpaid principal and interest, based on the prevailing conversion rate of US$1 = ₱53.282. Out of its total liabilities, Bayantel allegedly owes 43.2% or US$291 million (₱15.539 billion) to the Holders of the Notes.

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[13] By an equal progress; equably, ratably; without preference. Used especially of creditors who, in marshalling assets, are entitled to receive out of the same fund without any precedence over each other. BLACK'S LAW DICTIONARY 1004 (5th ed., 1979).

On July 25, 2003, The Bank of New York, as trustee for the Holders of the Notes, wrote Bayantel an Acceleration Letter declaring immediately due and payable the principal, premium interest, and other monetary obligations on all outstanding Notes. Then, on July 30, 2003, The Bank of New York filed a petition[14] for the corporate rehabilitation of Bayantel upon the instructions of the Informal Steering Committee.

On August 8, 2003, the Pasig RTC, Branch 158, issued a Stay Order[15] which directed, among others, the suspension of all claims against Bayantel and required the latter's creditors and other interested parties to file a comment or opposition to the petition. The court appointed Dr. Conchita L. Manabat to act as rehabilitation receiver but the latter declined.[16] In her stead, the court appointed Atty. Remigio A. Noval (Atty. Noval) who took his oath and posted a bond on September 26, 2003.[17]

On November 28, 2003, the Rehabilitation Court gave due course to the petition and directed the Rehabilitation Receiver to submit his recommendations to the court within 120 days from the initial hearing.[18] After several extensions, Atty. Noval filed on March 22, 2004 a Compliance and Submission of the Report as Compelling Evidence that Bayantel may be Successfully Rehabilitated.[19]

In his report, Atty. Noval classified Bayantel's debts into three: (1) those owed to secured Bank Creditors pursuant to the Omnibus Agreements (Omnibus Creditors) in the total amount of US$334 million or ₱17.781 billion; (2) those owed to Holders of the Senior Notes and Bank Creditors combined (Chattel Creditors), comprising US$625 million, of which US$473 million (₱25.214 billion) is principal and US$152 million (₱8.106 billion) is accrued unpaid interest; and (3) those that Bayantel owed to

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14 *Rollo* (G.R. Nos. 175418-20), Vol. I, pp. 203-218.
15 Id. at 246-249.
16 CA *rollo*, Vol. II, pp. 302-303.
17 Id. at 313, 316.
18 *Rollo* (G.R. Nos. 175418-20), Vol. I, pp. 307-318.
19 *Rollo* (G.R. No. 177270), Vol. I, pp. 245-250.

persons other than Financial Creditors/unsecured creditors in the amount of US$49 million or ₱2.608 billion.

According to The Bank of New York, out of the US$674 million that respondent owes its creditors under groups 2 and 3 above, the amount outstanding under the Senior Notes represent 43.2% of its liabilities as of May 31, 2003. Subsequently, negotiations for the restructuring of Bayantel's debt reached an impasse when the Informal Steering Committee insisted on a *pari passu* treatment of the claims of both secured and unsecured creditors.

Meanwhile, on January 20, 2004, Bayantel filed a "Motion to Include Radio Communications Philippines, Inc. [RCPI] and Naga Telephone Company [Nagatel] as Debtor-Corporations for Rehabilitation x x x."[20]

The Rehabilitation Court denied said motion in an Order[21] dated April 19, 2004. The *fallo* of said order reads:

> WHEREFORE, the Court resolves the pending incidents as follows:
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> 1. The Urgent Motion to Resolve of petitioner is hereby granted. The creditors of Bayantel, whether secured or unsecured, should be treated equally and on the same footing or *pari passu* until the rehabilitation proceedings is terminated in accordance with the Interim Rules;
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> 2. The Motion of Bayantel to Include RCPI and Nagatel in the present rehabilitation proceedings as debtor-corporations is denied;
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> 3. The Motion of Bayantel to Exempt from the Stay Order the payment of the compensation package of its former employees per Annex "A" attached to said motion is granted, subject to the verification and confirmation of the items therein by the Rehabilitation Receiver;
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> 4. The Motion of Petitioner to Strike Out the proposed rehabilitation plan of Bayantel is denied.
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> SO ORDERED.[22]

On June 28, 2004, the Pasig RTC, Branch 158, acting as a

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20 *Rollo* (G.R. Nos. 175418-20), Vol. I, pp. 319-330.
21 Id. at 650-654.
22 Id. at 653-654.

Rehabilitation Court, approved the Report and Recommendations[23] attached by the Receiver to his "Submission with Prayer for Further Guidance from the Honorable Court,"[24] subject to the following clarifications and/or amendments:

> 1. The ruling on the pari passu treatment of all creditors whose claims are subject to restructuring shall be maintained and shall extend to all payment terms and treatment of past due interest.
>
> 2. Due regard shall be given to the rights of the secured creditors and no changes in the security positions of the creditors shall be granted as a result of the rehabilitation plan as amended and approved herein.
>
> 3. The level of sustainable debt of the rehabilitation plan, as amended, shall be reduced to the amount of [US]$325,000,000 for a period of 19 years.
>
> 4. Unsustainable debt shall be converted into an appropriate instrument that shall not be a financial burden for Bayantel.
>
> 5. All provisions relating to equity in the rehabilitation plan, as approved and amended, must strictly conform to the requirements of the Constitution limiting foreign ownership to 40%.
>
> 6. A Monitoring Committee shall be formed composed of representatives from all classes of the restructured debt. The Rehabilitation Receiver's role shall be limited to the powers of monitoring and oversight as provided in the Interim Rules.
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> All powers provided for in the Report and Recommendations, which exceed the monitoring and oversight functions mandated by the Interim Rules shall be amended accordingly.
>
> SO ORDERED.[25]

Dissatisfied, The Bank of New York filed a Notice of Appeal[26] on August 6, 2004. So did Avenue Asia Investments, L.P., Avenue Asia International, Ltd., Avenue Asia Special Situations Fund II, L.P., Avenue Asia Capital Partners, L.P., and Avenue Asia Special Situations Fund III, L.P. which filed a Joint Record on Appeal[27] on August 9, 2004.

On September 28, 2004, Bayantel submitted an Implementing Term Sheet to the Rehabilitation Court and the Receiver. Claiming that said Term Sheet was inadequate to protect the interest of the creditors, The Bank of

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23 Id. at 670-843.
24 Id. at 655-669.
25 Id. at 1028-1029.
26 CA *rollo*, Vol. I, pp. 30-35.
27 Id. at 37-56.

New York (petitioner in G.R. No. 177270) filed a Manifestation[28] dated October 15, 2004 praying for the constitution of a Monitoring Committee and the creation of a convertible debt instrument to cover the unsustainable portion of the restructured debt.

On November 9, 2004, the Rehabilitation Court issued an Order[29] directing the creation of a Monitoring Committee to be composed of one member each from the group of Omnibus Creditors and unsecured creditors, and a third member to be chosen by the unanimous vote of the first two members. In the same Order, the court defined the scope of the Monitoring Committee's authority, as follows:

> x x x The Monitoring Committee shall participate with the Receiver in monitoring and overseeing the actions of the Board of Directors of Bayantel and may, by majority vote, adopt, modify, revise or substitute, any of the following items:
>
> (1) any proposed Annual OPEX Budgets;
>
> (2) any proposed Annual CAPEX Budgets;
>
> (3) any proposed Reschedule;
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> (4) any proposed actions by the Receiver on a payment default;
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> (5) terms of Management Incentivisation Scheme and Management Targets;
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> (6) the EBITDA/Revenue ratios set by the Bayantel Board of Directors; and
>
> (7) any other proposed actions by the Bayantel Board of Directors including, without limitation, issuance of new shares, sale of core and non-core assets, change of business, etc. that will materially affect the terms and conditions of the rehabilitation plan and its implementation.
>
> In case of disagreement between the Monitoring Committee and the Board of Directors of Bayantel on any of the foregoing matters, the same shall be submitted to the Court for resolution.[30]

On November 16, 2004, The Bank of New York filed a Petition for Review[31] before the Court of Appeals. The petition was docketed as CA-G.R. SP No. 87100 in the Fifteenth Division of the Court of Appeals. On even date, Avenue Asia Investments, L.P., Avenue Asia International, Ltd.,

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28 *Rollo* (G.R. Nos. 175418-20), Vol. I, pp. 1067-1092.
29 *Rollo* (G.R. No. 177270), Vol. I, pp. 509-511.
30 Id. at 510.
31 CA *rollo*, Vol. I, pp. 78-161. The petition was filed under Rule 43 of the 1997 Rules of Civil Procedure, as amended.

Avenue Asia Special Situations Fund II, L.P., Avenue Asia Capital Partners, L.P., and Avenue Asia Special Situations Fund III, L.P (Avenue Asia Capital Group) filed a similar petition[32] which was docketed as CA-G.R. SP No. 87111 in the Second Division of the Court of Appeals. Both petitions contest the Rehabilitation Court's June 28, 2004 Decision for, among others, fixing the level of Bayantel's sustainable debt at US$325 million to be paid in 19 years.

Thereafter, on November 30, 2004, petitioners Express Investments III Private Ltd. and Export Development Canada along with Bayerische Landesbank (Singapore Branch), Credit Industriel et Commercial, Deutsche Bank AG, P.T. Bank Negara Indonesia (Persero), TBK, Hong Kong Branch and Rizal Commercial Banking Corporation filed a Petition for Review[33] which was docketed as CA-G.R. No. 87203 in the Tenth Division of the Court of Appeals. The secured creditors likewise assailed the Rehabilitation Court's June 28, 2004 Decision insofar as it ordered the *pari passu* treatment of all claims against Bayantel. Said petitioners invoke a lien over the cash flow and receivables of Bayantel by virtue of the Assignment Agreement.

On December 23, 2004, Bayantel filed an Omnibus Motion[34] for the consolidation of CA-G.R. SP Nos. 87111 and CA-G.R. SP No. 87203 with CA-G.R. SP No. 87100, the lowest-numbered case.

In a Resolution dated January 20, 2005, the Court of Appeals, Fifteenth Division, ordered the consolidation of CA-G.R. SP No. 87203 with CA-G.R. SP No. 87100. This was accepted by the Court of Appeals, Seventh Division, in a Resolution[35] dated March 29, 2005. Then, in the Resolution[36] dated June 10, 2005, the Court of Appeals, First Division, ordered the consolidation of CA-G.R. SP No. 87111 with 87100 and the transmittal of the records of the three cases to the Seventh Division.

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32 Id. at 219-302.
33 *Rollo* (G.R. Nos. 174457-59), Vol. I, pp. 1470-1535.
34 *Rollo* (G.R. Nos. 175418-20), Vol. I, pp. 1099-1109.
35 Id. at 1115-1119.
36 Id. at 1111-1112.

Meanwhile, on January 10, 2005, Atty. Noval submitted to the Rehabilitation Court an Implementing Term Sheet[37] to serve as a guide for Bayantel's Rehabilitation. The same was approved in an Order[38] dated March 15, 2005. In the same Order, the Rehabilitation Court appointed Avenue Asia Investments L.P. and Export Development Canada to represent the unsecured and secured creditors, respectively, in the Monitoring Committee.

On May 26, 2005, Bayantel filed a petition for certiorari and prohibition[39] docketed as CA-G.R. SP No. 89894 in the Court of Appeals. Said petition assailed the Rehabilitation Court's Orders dated November 9, 2004 and March 15, 2005, for purportedly conferring upon the Monitoring Committee, powers of management and control over its operations.

The Court of Appeals Decision in CA-G.R. Nos. 87100, 87111 and 87203

In the assailed August 18, 2006 Decision, the Court of Appeals dismissed the petitions in CA-G.R. SP Nos. 87100, 87111 and 87203 for lack of merit. The appellate court upheld the Rehabilitation Court's determination of Bayantel's sustainable debt at US$325 million payable in 19 years. It rejected the Receiver's proposal to set the sustainable debt at US$370 million payable in 15 years, and the proposal of the Avenue Asia Capital Group to set it at US$471 million payable in 12 years.

The Court of Appeals agreed with the Rehabilitation Court that it is reasonable to adopt a level of sustainable debt that approximates respondent Bayantel's proposal because the latter is in the best position to determine the level of sustainable debt that it can manage. It found Bayantel's proposal more credible considering that it was prepared using "updated financial information with realistic cash flow figures."[40] The appellate court noted that Bayantel's proposal was drafted without regard for its status as a "niche

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37 *Rollo* (G.R. No. 177270), Vol. I, pp. 729-803.
38 Id. at 609-614.
39 Id. at 619-664.
40 *Rollo* (G.R. Nos. 175418-20), Vol. I, p. 29.

player" in the telecommunications market and after factoring the cost of reorganization. In contrast, it expressed concern that the proposals submitted by Avenue Asia Capital Group and the Receiver might eventually leave Bayantel with an unworkable financial debt-to-revenue ratio.

The Court of Appeals also confirmed the Rehabilitation Court's authority to approve, reject, substitute, or even change the rehabilitation plans submitted by the Receiver and the parties. It upheld the trial court in adopting the Receiver's recommendation to limit the equity conversion of Bayantel's unsustainable debt to 40% of its paid-up capital. This percentage, the appellate court explains, is consistent with the constitutional limitation on the allowable foreign equity in Filipino corporations. It also maintained the write-off of penalties and default interest and recomputation of Bayantel's past due interest, as a valid exercise of discretion by the Rehabilitation Court under the Interim Rules of Procedure on Corporate Rehabilitation (Interim Rules). The appellate court negated any violation of the *pari passu* principle with the use of these measures since they shall apply to all classes of creditors.

As to the claim of the secured creditors in CA-G.R. SP No. 87203, the Court of Appeals ruled that while rehabilitation is ongoing, the sole control over the security on the receivables and cash flow of Bayantel is vested in the Rehabilitation Court. To allow otherwise would not only violate the Stay Order but interfere as well with the duty of the Receiver to "take possession, control and custody of the debtor's assets."[41] Ultimately, the Court of Appeals ruled that preference in payment cannot be accorded the secured creditors since preference applies only in liquidation proceedings.

Discontented, The Bank of New York and the Avenue Asia Capital Group (petitioners in CA-G.R. SP Nos. 87100 and 87111) filed a Motion for Partial Reconsideration.[42] Said motion was, however, denied in the Resolution

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41 Id. at 38.
42 CA *rollo*, Vol. I, pp. 877-911.

dated November 8, 2006.

In the meantime, Express Investments III Private Ltd. and Export Development Canada had filed before this Court a Petition for Partial Review on Certiorari of the Court of Appeals Decision docketed as G.R. Nos. 174457-59. According to petitioners, the other secured creditors who were also petitioners in CA-G.R. SP No. 87203 had not remained in contact with them and had not authorized them to file further petitions on their behalf.

On December 28, 2006, The Bank of New York and the Avenue Asia Capital Group also filed their own Petition for Review on Certiorari which was docketed as G.R. Nos. 175418-20.

The Court of Appeals Decision in CA-G.R. SP No. 89894

In CA-G.R. SP No. 89894, the Court of Appeals rendered the assailed Decision dated October 27, 2006 declaring null and void the November 9, 2004 and March 15, 2005 Orders of the Rehabilitation Court insofar as they defined the powers and functions of the Monitoring Committee.

The appellate court found grave abuse of discretion on the part of the Rehabilitation Court for conferring upon the Monitoring Committee the power to modify, reverse or overrule the proposals of Bayantel's Board of Directors relative to operations. It stressed that the Committee's functions are confined to monitoring and overseeing the operations of Bayantel to ensure its compliance with the terms and conditions of the Rehabilitation Plan. To conform therewith, the appellate court restated the Committee's powers as follows:

> The Monitoring Committee shall participate with the Receiver in monitoring and overseeing the operations of Bayantel to ensure compliance by Bayantel with the terms and conditions of the Rehabilitation Plan. In the event Bayantel fails to meet any of the milestones under the Rehabilitation Plan or fails to comply with any material provision thereunder, the Monitoring Committee may, by majority vote, **recommend** modifications, revisions and substitutions of the following items:

x x x x[43] (Emphasis supplied)

The Court of Appeals likewise approved of the Implementing Term Sheet, clarifying that the same is not intended to address every contingency that may arise in the implementation of the Plan. It assured that any doubt in the interpretation of the Term Sheet shall be resolved by the Rehabilitation Court.

Lastly, the appellate court affirmed the creation of a convertible debt instrument to cover the unsustainable portion of respondent's debt. It perceives such instrument as a tool to generate surplus cash to satisfy Bayantel's debt under Tranche B. As well, it serves as a buy-back scheme for the assignment and transfer of credits by the Financial Creditors in a manner that will not unduly burden Bayantel.

Issues

On October 19, 2006, Express Investments III Private Ltd. and Export Development Canada[44] filed a Petition for Partial Review on Certiorari which was docketed as G.R. Nos. 174457-59. Said petition, which seeks the reversal of the August 18, 2006 Decision of the Court of Appeals insofar as it dismissed the petition of the secured creditors in CA-G.R. SP No. 87203, essentially proffers the following issues for resolution: (1) whether the claims of secured and unsecured creditors should be treated *pari passu* during rehabilitation; (2) whether the *pari passu* treatment of creditors during rehabilitation impairs the Assignment Agreement between respondent and petitioners; (3) whether an impairment in the security position of petitioners can be justified as a valid exercise of police power.

On the other hand, The Bank of New York and the Avenue Asia Capital Group filed a Petition for Review on Certiorari docketed as G.R. Nos.

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43 *Rollo* (G.R. No. 177270), Vol. I, pp. 28-29.

44 Apparently, the other secured creditors who were also petitioners in CA-G.R. SP No. 87203 had not remained in contact with the *Ad Hoc* Committee of the secured creditors and did not furnish it with the requisite secretary's certificate authorizing the filing of a petition on their behalf. [*Rollo* (G.R. Nos. 174457-59), Vol. I, p. 16.]

175418-20, to question the appellate court's August 18, 2006 Decision as well as its November 8, 2006 Resolution in CA-G.R. SP Nos. 87100 and 87111. This second consolidated petition raises the following issues: (1) whether the Court of Appeals erred in setting Bayantel's sustainable debt at US$325 million, payable in 19 years; (2) whether a debtor may submit a rehabilitation plan in a creditor-initiated rehabilitation; (3) whether the conversion of debt to equity in excess of 40% of the outstanding capital stock in favor of petitioners violates the constitutional limit on foreign ownership of a public utility; (4) whether the write-off of respondent's penalties and default interest and recomputation of its past due interest violate the *pari passu* principle; and (5) whether petitioners are entitled to costs.

On February 22, 2007, respondent Bayantel moved for the consolidation of G.R. Nos. 174457-59 with G.R. Nos. 175418-20. In a Resolution[45] dated April 23, 2007, we directed the Division Clerk of Court to study the feasibility of consolidating said cases. In a Memorandum Report[46] dated May 17, 2007, the First Division Clerk of Court recommended the consolidation of G.R. Nos. 174457-59 with G.R. Nos. 175418-20.

On May 21, 2007, The Bank of New York, as trustee for the Holders of the Senior Notes, filed a Petition for Review on Certiorari, docketed as G.R. No. 177270, to assail the October 27, 2006 Decision and March 23, 2007 Resolution of the Court of Appeals in CA-G.R. SP No. 89894. Amplified, the petition presents the lone issue of whether the Monitoring Committee in this case may exercise control over Bayantel's operations.

In a Resolution[47] dated June 6, 2007, we directed the Division Clerk of Court to study the feasibility of consolidating G.R. No. 177270 with G.R. Nos. 174457-59 and G.R. Nos. 175418-20. To avoid conflicting decisions on related cases, the Assistant Clerk of Court recommended the

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45 *Rollo* (G.R. Nos. 175418-20), Vol. I, p. 1669.
46 Id. at 1670-1673.
47 *Rollo* (G.R. No. 177270), Vol. I, p. 1085.

consolidation of the three cases. By Resolution[48] dated July 11, 2007, the Court ordered the consolidation of G.R. No. 177270 with G.R. Nos. 174457-59 and G.R. Nos. 175418-20.

The Parties' Arguments

In G.R. Nos. 174457-59

The petitioners/secured creditors argue primarily that the *pari passu* treatment of creditors during rehabilitation has no basis in law. According to petitioners, all that Presidential Decree No. 902-A[49] (PD 902-A) provides is the suspension of all claims against the debtor corporation during rehabilitation so that the Receiver can exercise his powers free from judicial or extrajudicial interference. If the equity policy is to be considered at all, they believe that the equity policy should be construed to accord creditors with similar rights or uniform treatment. In line with this, petitioners assert priority under the Assignment Agreement to receive from Bayantel's surplus cash flow and to be paid in full, ahead of all other creditors.

The petitioners/secured creditors contend that the *pari passu* treatment of claims impairs the Omnibus Agreement and the Assignment Agreement. Such impairment, they posit, cannot be justified as a proper exercise of police power for three reasons: *first*, there is no law which authorizes the equal treatment of claims; *second*, there is no enabling law; and *third*, it is not reasonably necessary for the success of the rehabilitation.

Petitioners point out that the Interim Rules mandates instead that the rehabilitation plan shall give due regard to the interest of the secured creditors. For petitioners, the preservation of Bayantel's chattels alone is inadequate to meet said requirement since the value thereof depreciates over time. They go on to invoke international practices on bankruptcy and

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48 Id. at 1089-1090.

49 REORGANIZATION OF THE SECURITIES AND EXCHANGE COMMISSION WITH ADDITIONAL POWERS AND PLACING THE SAID AGENCY UNDER THE ADMINISTRATIVE SUPERVISION OF THE OFFICE OF THE PRESIDENT.

rehabilitation which purportedly recognize the distinction between the rights of secured and unsecured creditors. Petitioners warn of dire consequences to the international credit standing of the Philippines, the financial market, and the influx of foreign investments if the *pari passu* principle would be upheld. Finally, petitioners maintain that a "Trigger Event"[50] had occurred which rendered respondent's obligations due and demandable. Thus, despite their failure to notify respondent of the alleged Events of Default, petitioners believe that they can rightfully proceed against the securities.

For its part, respondent Bayantel reasons that enforcing preference in payment at this stage of the rehabilitation would only disrupt the progress it has made so far. It assures petitioners that their security rights are adequately protected in case the collateral assets are disposed. Respondent adds that no single payment scheme is applicable in all rehabilitation proceedings and the peculiar circumstances of its case warrant the *pari passu* treatment of its creditors.

In G.R. Nos. 175418-20

Mainly, petitioners Bank of New York and Avenue Asia Capital Group impute error on the Court of Appeals for affirming the Rehabilitation Court's decision which adopted the sustainable debt level Bayantel proposed. The court *a quo* fixed respondent's sustainable debt at US$325 million payable within 19 years against the Receiver's proposal of US$370 million payable in 15 years. Petitioners dispute Bayantel's financial projections as unreliable and contrived, designed to bear out a reduced level of sustainable debt and justify a substantial write-off of its debts. In order to arrive at a reasonable

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[50] Part M of the Omnibus Agreement states that a "Trigger Event" shall mean 75% of the outstanding principal amount constituting Secured Obligations shall have been declared to be, or shall automatically have become, due and payable (and shall not have been rescinded) by reason of one or more Events of Default, as evidenced by the notices provided to the Collateral Agent by the Credit Agents pursuant to Section 4(a) of the [Inter-creditor] Agreement, *except* that the foregoing percentage shall be 66 2/3% in the event that (i) one or more Events of Default arise by reason of the non-payment when due of any scheduled payment of principal or interest by the Company under any Credit Agreement, and (ii) such an Event of Default or Events of Default give rise to one or more Events of Default under a cross-acceleration provision in any other Financing Document (including Section 9.01(b) of each Existing Credit Agreement). (Underscoring and italics in the original) [*Rollo* (G.R. Nos. 174457-59), Vol. I, p. 130.]

level of sustainable debt, they believe that the prospective cash flow of Bayantel must be reckoned against industry standards. Petitioners point out that the Interim Rules only allows the debtor, in a creditor-initiated petition for corporate rehabilitation, to file a comment or opposition but not to submit its own rehabilitation plan. They warn that if the fulfillment of the obligation would be made to depend on the sole will of Bayantel, the entire obligation would be void.

Petitioners fault the trial court for basing the sustainable debt on the state of the telecommunications industry in the country rather than consulting the financial projections and business models submitted by petitioners and the Receiver. They stress that the state of the telecommunications industry is not among those which the court may take judicial notice of by discretion.

Petitioners maintain that converting the unsustainable debt to 77.7% equity in Bayantel will not violate the nationality requirement of the 1987 Constitution. They aver that the debts to domestic bank creditors[51] account is US$473 million or 70.18% of Bayantel's total liabilities. Considering the substantial write-off of penalties and default interest in the amount of US$34,044,553.00 and past due interest of US$25,243,381.07, petitioners believe that it is only fair to accord the Financial Creditors greater equity in Bayantel to compensate for said losses.

Moreover, it is the petitioners' view that the write-off contravenes the *pari passu* principle because they would suffer greater losses than the Omnibus Creditors. According to petitioners, approximately 82% of the penalties and interests shall be borne by the unsecured creditors and the Holders of Notes. In the same vein, petitioners protest the recomputation of past due interest in accordance with the rate proposed by the Receiver. They

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[51] Bank of the Philippine Islands, Banco de Oro Universal Bank, China Bank Corporation, Development Bank of the Philippines, Equitable Philippine Commercial International Bank, Land Bank of the Philippines, Metrobank, PCCI, Philippine Commercial International Bank, Rizal Commercial Banking Corporation, United Coconut Planter's Bank and Union Bank. [*Rollo* (G.R. Nos. 175418-20), Vol. I, pp. 102-103.]

claim that recomputation would result in the condonation of 89% of the accrued interest owing them. The Receiver's report shows that as of the filing of the present petition, the total accrued interest amounts to US$106,054,197.66, of which, US$91,100,000 are due the Holders of Notes.

Finally, petitioners reiterate their claim for costs. In its Order dated March 15, 2005, the Rehabilitation Court awarded costs of suit to petitioner Bank of New York. In particular, it granted the latter's prayer for the payment of filing fees, costs of publication and professional fees. Even then, petitioner bank claims that a huge amount of its expenses for the professional fees of counsels and advisers remain unpaid. More importantly, it asserts precedence in payment over the preferred creditors. In the alternative, the Bank of New York prays that the costs of suit be incorporated in the award to the nonfinancial or trade creditors. Similarly, the Avenue Asia Capital Group seeks reimbursement for the docket fees, publication expenses and the professional fees it has paid its counsels and financial adviser. It invokes Article 2208 of the Civil Code and the provisions of the Indenture as legal bases therefor.

Meanwhile, the secured creditors in G.R. Nos. 174457-59 filed a Memorandum[52] dated April 30, 2009 with a prayer for the dismissal of the bondholders' petition in G.R. Nos. 175418-20. For the secured creditors, the sustainable debt set by the Courts of Appeals is a more manageable and realistic undertaking compared to herein petitioners' proposal. They add that the fact that Bayantel's actual revenues are lower than its cash flow projections belies any scheme to avoid paying its debts in full. The secured creditors agree with the appellate court in limiting the conversion of the unsustainable debt to a maximum of 40% shares in Bayantel as more in keeping with the Constitution.

Further, the secured creditors point out that there is nothing in the Interim Rules which prohibits a debtor company from submitting an

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[52] *Rollo* (G.R. Nos. 175418-20), Vol. III, pp. 2720-2771.

alternative rehabilitation plan in creditor-initiated proceedings. In support of this, they cite Section 22,[53] Rule 4 of said rules which permits the debtor to modify its proposed plan or submit a revised or substitute plan. According to them, Bayantel's suggestion as to the terms of payment does not constitute a potestative condition that would render the obligation void.

The secured creditors, however, join petitioners in protesting the condonation of penalties and default interest. Rather than observing absolute equality, they insist that the *pari passu* principle should be applied such that creditors within the same class are treated alike.

In response, respondent Bayantel submitted on May 21, 2009, a Consolidated Memorandum[54] in G.R. Nos. 175418-20 and G.R. No. 177270. It practically echoed the *ratio decidendi* of the Court of Appeals in dismissing both petitions.

In G.R. Nos. 175418-20, Bayantel defends the Rehabilitation Court for adopting the sustainable debt level it proposed. Such approval by the court alone, Bayantel reasons, did not make the payment of its debt a condition whose fulfillment rests on its sole will, as to render the obligation void under Article 1182[55] of the Civil Code. Respondent maintains that among the stakeholders, it is in the best position to determine the level of debt that it can pay. Moreover, it believes that a majority of the secured creditors are comfortable with the approved sustainable debt since only two of them appealed. Respondent insists that altering the sustainable debt at this point would be counterproductive.

Respondent equally opposes the Bondholders' proposal to reduce the

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53 SEC. 22. ***Modification of the Proposed Rehabilitation Plan.*** – The debtor may modify its rehabilitation plan in the light of the comments of the Rehabilitation Receiver and creditors or any interested party and submit a revised or substitute rehabilitation plan for the final approval of the court. Such rehabilitation plan must be submitted to the court not later than one (1) year from the date of the initial hearing.

54 *Rollo* (G.R. Nos. 175418-20), Vol. III, pp. 2994-3153.

55 Art. 1182. When the fulfillment of the condition depends upon the sole will of the debtor, the conditional obligation shall be void. If it depends upon chance or upon the will of a third person, the obligation shall take effect in conformity with the provisions of this Code.

company's capital expenditures to between 9% and 11% to make more funds available for debt servicing. This approach, according to Bayantel, ignores its need to make significant investments in new infrastructure in order to cope with competitors. Respondent disputes the value of petitioners' projections which were derived by benchmarking Bayantel's income, as a company under rehabilitation, against those of the major players, PLDT and Digitel.

Furthermore, respondent maintains that its rehabilitation plan was based on accurate financial data and operation reports. It insists that the Interim Rules allows a debtor, in creditor-initiated rehabilitation proceedings, to submit an alternative plan. It agrees with the Rehabilitation Court's decision to restrict conversion of the unsustainable debt to 40% of fully paid-up capital in Bayantel. Respondent believes that the waiver of penalties and default interest and the recomputation of past due interest will not violate the *pari passu* principle because said measures shall apply equally to all creditors. Lastly, respondent admits limited liability for costs pursuant to the Assignment Agreement but not for those incurred by petitioners under "non-consensual scenarios."

In G.R. No. 177270

In this petition for review, the Bank of New York, as trustee for the holders of the 13.5% Senior Notes of respondent Bayantel, challenges the Court of Appeals decision nullifying the Monitoring Committee's power to modify, reverse or overrule the decision of Bayantel's Board of Directors on certain matters. It invokes Section 23,[56] Rule 4 of the Interim Rules as legal

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[56] SEC. 23. ***Approval of the Rehabilitation Plan***. – The court may approve a rehabilitation plan even over the opposition of creditors holding a majority of the total liabilities of the debtor if, in its judgment, the rehabilitation of the debtor is feasible and the opposition of the creditors is manifestly unreasonable.

In determining whether or not the opposition of the creditors is manifestly unreasonable, the court shall consider the following:

a. That the plan would likely provide the objecting class of creditors with compensation greater than that which they would have received if the assets of the debtor were sold by a liquidator within a three-month period;
b. That the shareholders or owners of the debtor lose at least their controlling interest as a result of the plan; and

basis to justify the Rehabilitation Court's grant of extensive powers to the Monitoring Committee. The pertinent portion of said Rule states:

> In approving the rehabilitation plan, the court shall issue the necessary orders or processes for its immediate and successful implementation. It may impose such terms, conditions, or restrictions as the effective implementation and monitoring thereof may reasonably require, or for the protection and preservation of the interests of the creditors should the plan fail.

Petitioner contends that the magnitude and complexity of respondent's business necessitate close monitoring of its operations to ensure successful rehabilitation. Specifically, the Bank of New York expresses concern over Bayantel's taciturn disposition as regards its budget and expansion costs. Petitioner believes that such lack of transparency can be addressed by empowering the Monitoring Committee to approve measures that will ultimately affect respondent's ability to settle its debts.

Moreover, petitioner assures that the Implementing Term Sheet provides safeguards against the improvident disapproval by the Monitoring Committee of proposed measures. Petitioner is of the view that the functions of the Monitoring Committee would be rendered illusory if all disagreements on key areas would have to be heard by the Rehabilitation Court. Petitioner explains that the Monitoring Committee's powers do not in any way supplant those of the Board of Directors. The Bank of New York claims that it is customary to allow creditors to monitor and supervise the debtor's operations as demonstrated by the restructuring experiences of certain Asian countries.

Petitioner submits that the Rehabilitation Court did not intend to give the Monitoring Committee powers that are concurrent with those of the Receiver on account of the differing interests that they represent in rehabilitation. It argues that if at all, the court *a quo* committed a mere error

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c. The Rehabilitation Receiver has recommended approval of the plan.

In approving the rehabilitation plan, the court shall issue the necessary orders or processes for its immediate and successful implementation. It may impose such terms, conditions, or restrictions as the effective implementation and monitoring thereof may reasonably require, or for the protection and preservation of the interests of the creditors should the plan fail.

of judgment not correctible by certiorari. Petitioner adds that even if a petition for certiorari was proper, the 60-day reglementary period provided by the Rules of Court had already lapsed when Bayantel filed its petition on May 27, 2005. It contends that Bayantel's Manifestation and Motion for Clarification dated December 15, 2004 was in truth a motion for reconsideration which is a prohibited pleading under Section 1,[57] Rule 3 of the Interim Rules. Petitioner concludes that such pleadings did not toll the period for filing a petition and, therefore, the Rehabilitation Court's decision had become final.

In its Consolidated Memorandum dated May 21, 2009, Bayantel counters that Section 23, Rule 4 of the Interim Rules should be understood as delineating the purpose of the court's orders and processes to mere implementation and monitoring of the plan. Respondent opposes any interpretation of said provision which authorizes the Committee to substitute its judgment for those of the Board or vest it with powers greater than those of the Receiver. It argues that vesting the Committee with veto power over certain decisions of the Board would effectively give it control and management over Bayantel's operations. The necessary effect, according to Bayantel, is that every disagreement between the Committee and the Board would have to be settled in court. Respondent points out that petitioner

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[57] Section 1. ***Nature of Proceedings***. – Any proceeding initiated under these Rules shall be considered *in rem*. Jurisdiction over all those affected by the proceedings shall be considered as acquired upon publication of the notice of the commencement of the proceedings in any newspaper of general circulation in the Philippines in the manner prescribed by these Rules.

The proceedings shall also be summary and non-adversarial in nature. The following pleadings are prohibited:

a. Motion to dismiss;
b. Motion for a bill of particulars;
c. Motion for new trial or for reconsideration;
d. Petition for relief;
e. Motion for extension;
f. Memorandum;
g. Motion for postponement;
h. Reply or Rejoinder;
i. Third party complaint; and
j. Intervention.

Any pleading, motion, opposition, defense, or claim filed by any interested party shall be supported by verified statements that the affiant has read the same and that the factual allegations therein are true and correct of his personal knowledge or based on authentic records and shall contain as annexes such documents as may be deemed by the party submitting the same as supportive of the allegations in the affidavits. The court may decide matters on the basis of affidavits and other documentary evidence. Where necessary, the court shall conduct clarificatory hearings before resolving any matter submitted to it for resolution.

failed to cite proof of its claim that it is customary among Asian countries to allow the Monitoring Committee active participation during rehabilitation.

Bayantel perceive the instant petition as an underhanded attempt by petitioner to create a Management Committee without satisfying the requisites therefor. It reiterates that the functions of the Monitoring Committee are confined to ensuring that Bayantel meets the debt reduction milestones under the plan. Respondent avers that even without a Monitoring Committee, it is obliged under the Plan to comply with certain information covenants and reportorial requirements. It adds that the Plan provides a mechanism for dispute resolution through which creditors can enforce compliance.

Penultimately, respondent assails the validity of the Order dated November 9, 2004 for lack of notice. Allegedly, Bayantel learned of said Order only after petitioner furnished it a copy of its Compliance to which the same was made an attachment. Thus, respondent insists that the reglementary period to file an appeal or a petition for certiorari did not run against it.

The Court's Ruling

In G.R. Nos. 174457-59

Rehabilitation is an attempt to conserve and administer the assets of an insolvent corporation in the hope of its eventual return from financial stress to solvency.[58] It contemplates the continuance of corporate life and activities in an effort to restore and reinstate the corporation to its former position of successful operation and liquidity. The purpose of rehabilitation proceedings is precisely to enable the company to gain a new lease on life and thereby allow creditors to be paid their claims from its earnings.[59]

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[58] BLACK'S LAW DICTIONARY 1157 (5th ed., 1979).

[59] *Negros Navigation Co., Inc. v. Court of Appeals, Special Twelfth Division*, G.R. Nos. 163156 & 166845, December 10, 2008, 573 SCRA 434, 450.

Rehabilitation shall be undertaken when it is shown that the continued operation of the corporation is economically feasible and its creditors can recover, by way of the present value of payments projected in the plan, more, if the corporation continues as a going concern than if it is immediately liquidated.[60]

The law governing rehabilitation and suspension of actions for claims against corporations is PD 902-A, as amended. On December 15, 2000, the Court promulgated A.M. No. 00-8-10-SC or the Interim Rules of Procedure on Corporate Rehabilitation, which applies to petitions for rehabilitation filed by corporations, partnerships and associations pursuant to PD 902-A.

In January 2004, Republic Act No. 8799 (RA 8799), otherwise known as the Securities Regulation Code, amended Section 5 of PD 902-A, and transferred to the Regional Trial Courts the jurisdiction of the Securities and Exchange Commission (SEC) over petitions of corporations, partnerships or associations to be declared in the state of suspension of payments in cases where the corporation, partnership or association possesses property to cover all its debts but foresees the impossibility of meeting them when they respectively fall due or in cases where the corporation, partnership or association has no sufficient assets to cover its liabilities, but is under the management of a rehabilitation receiver or a management committee.

In order to effectively exercise such jurisdiction, Section 6(c), PD 902-A empowers the Regional Trial Court to appoint one or more receivers of the property, real and personal, which is the subject of the pending action before the Commission whenever necessary in order to preserve the rights of the parties-litigants and/or protect the interest of the investing public and creditors.

Under Section 6, Rule 4 of the Interim Rules, if the court finds the petition to be sufficient in form and substance, it shall issue, not later than

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[60] See *Pacific Wide Realty and Development Corporation v. Puerto Azul Land, Inc.*, G.R. Nos. 178768 & 180893, November 25, 2009, 605 SCRA 503, 515.

five (5) days from the filing of the petition, an Order with the following pertinent effects:

> (a) appointing a Rehabilitation Receiver and fixing his bond;
>
> **(b) staying enforcement of all claims, whether for money or otherwise and whether such enforcement is by court action or otherwise, against the debtor, its guarantors and sureties not solidarily liable with the debtor;**
>
> (c) prohibiting the debtor from selling, encumbering, transferring, or disposing in any manner any of its properties except in the ordinary course of business;
>
> (d) prohibiting the debtor from making any payment of its liabilities outstanding as at the date of filing of the petition; x x x (Emphasis supplied)

The stay order shall be effective from the date of its issuance until the dismissal of the petition or the termination of the rehabilitation proceedings.[61] Under the Interim Rules, the petition shall be dismissed if no rehabilitation plan is approved by the court upon the lapse of 180 days from the date of the initial hearing. The court may grant an extension beyond this period only if it appears by convincing and compelling evidence that the debtor may successfully be rehabilitated. In no instance, however, shall the period for approving or disapproving a rehabilitation plan exceed 18 months from the date of filing of the petition.[62]

On the other hand, Section 27, Rule 4 of the Interim Rules provides when the rehabilitation proceedings is deemed terminated:

> SEC. 27. ***Termination of Proceedings.*** – In case of the failure of the debtor to submit the rehabilitation plan, or the disapproval thereof by the court, or the failure of the rehabilitation of the debtor because of failure to achieve the desired targets or goals as set forth therein, or the failure of the said debtor to perform its obligations under the said plan, or a determination that the rehabilitation plan may no longer be implemented in accordance with its terms, conditions, restrictions, or assumptions, the court shall upon motion, *motu proprio*, or upon the recommendation of the Rehabilitation Receiver, terminate the proceedings. **The proceedings shall also terminate upon the successful implementation of the rehabilitation plan**. (Emphasis supplied)

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61 INTERIM RULES OF PROCEDURE ON CORPORATE REHABILITATION, Rule 4, Section 11.
62 Id.

Hence, unless the petition is dismissed for any reason, the stay order shall be effective until the rehabilitation plan has been successfully implemented. In the meantime, the debtor is prohibited from paying any of its outstanding liabilities as of the date of the filing of the petition except those authorized in the plan under Section 24(c), Rule 4 of the Interim Rules.

In this case, in an Order dated April 19, 2004, the Rehabilitation Court held that "[t]he creditors of Bayantel, whether secured or unsecured, should be treated equally and on the same footing or *pari passu* until the rehabilitation proceedings is terminated in accordance with the Interim Rules."[63] The court reiterated this pronouncement in its Decision dated June 28, 2004.

Before us, petitioners contend that such *pari passu* treatment of claims violates not only the "due regard" provision in the Interim Rules but also the Contract Clause in the 1987 Constitution. Petitioners assert precedence in the payment of claims during rehabilitation by virtue of the Assignment Agreement dated September 19, 1995. Under said Agreement, Bayantel assigned, charged, conveyed and transferred to a Collateral Agent, the following properties as collateral for the prompt and complete payment of its obligations to secured creditors:

> (i) All land, buildings, machinery and equipment currently owned, and to be acquired in the future by Bayantel;
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> (ii) All monies payable to Bayantel under the Project Documents (as the term is defined by the Omnibus Agreement);
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> (iii) All Project Documents and all Contract Rights arising thereunder;
>
> (iv) All receivables;
>
> (v) Each of the Accounts (as the term is defined by the Omnibus Agreement);
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> (vi) All amounts maintained in the Accounts and all monies, securities and instruments deposited or required to be deposited in the Accounts;
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> (vii) All other Chattel Paper and Documents;

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63 *Rollo* (G.R. Nos. 174457-59), Vol. I, p. 1240.

(viii) All other property, assets and revenues of Bayantel, whether tangible or intangible;

(ix) All General Intangibles; and

(x) All proceeds and products of any and all of the foregoing.[64]

In particular, petitioners refer to Section 4.02 of the Assignment Agreement as basis for demanding full payment, ahead of other creditors, out of respondent's revenue from operations during rehabilitation. The relevant provision reads:

> Section 4.02. Payments Under Contracts and Receivables.
> If during the continuance of a Trigger Event the Company shall receive directly from any party to any Assigned Agreement or from any account debtor or other obligor under any Receivable, any payments under such agreements or the Receivables, **the Company shall receive such payments in a constructive trust for the benefit of the Secured Parties**, shall segregate such payments from its other funds, and shall forthwith transmit and deliver such payments to the Collateral Agent in the same form as so received (with any necessary endorsement) along with a description of the sources of such payments. All amounts received by the Collateral Agent pursuant to this Section 4.02 shall be applied as set forth in Part L and in the [Inter-creditor] Agreement.[65] (Underscoring in the original; emphasis supplied)

The resolution of the issue at hand rests on a determination of whether secured creditors may enforce preference in payment during rehabilitation by virtue of a contractual agreement.

Section 6(c), PD 902-A provides that upon the appointment of a management committee, rehabilitation receiver, board or body, all actions for claims against corporations, partnerships or associations under management or receivership pending before any court, tribunal, board or body shall be suspended accordingly.[66] The suspension of action for claims against the corporation under a rehabilitation receiver or management committee embraces all phases of the suit, be it before the trial court or any tribunal or before this Court.[67]

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64 Id. at 39-40.
65 Id. at 133.
66 *Philippine Airlines, Inc. v. Zamora*, G.R. No. 166996, February 6, 2007, 514 SCRA 584, 601.
67 Id. at 605.

The justification for suspension of actions for claims is to enable the management committee or rehabilitation receiver to effectively exercise its/his powers free from any judicial or extrajudicial interference that might unduly hinder or prevent the "rescue" of the debtor company.[68] It is intended to give enough breathing space for the management committee or rehabilitation receiver to make the business viable again without having to divert attention and resources to litigation in various fora.[69]

In the 1990 case of *Alemar's Sibal & Sons, Inc. v. Judge Elbinias,*[70] the Court first enunciated the prevailing principle which governs the relationship among creditors during rehabilitation. In said case, G.A. Yupangco sought the issuance of a writ of execution to implement a final and executory default judgment in its favor and after Alemar's Sibal & Sons, Inc. was placed under rehabilitation. In ordering the stay of execution, the Court held:

> **During rehabilitation receivership, the assets are held in trust for the equal benefit of all creditors to preclude one from obtaining an advantage or preference over another by the expediency of an attachment, execution or otherwise**. For what would prevent an alert creditor, upon learning of the receivership, from rushing posthaste to the courts to secure judgments for the satisfaction of its claims to the prejudice of the less alert creditors.
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> **As between the creditors, the key phrase is "equality is equity." When a corporation threatened by bankruptcy is taken over by a receiver, all the creditors should stand on equal footing. Not anyone of them should be given any preference by paying one or some of them ahead of the others**. This is precisely the reason for the suspension of all pending claims against the corporation under receivership. Instead of creditors vexing the courts with suits against the distressed firm, they are directed to file their claims with the receiver who is a duly appointed officer of the SEC.[71] (Emphasis supplied)

Since then, the principle of equality in equity has been cited as the basis for placing secured and unsecured creditors in equal footing or in *pari passu* with each other during rehabilitation. In legal parlance, *pari passu* is used especially of creditors who, in marshaling assets, are entitled to receive

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68 *Rubberworld (Phils.), Inc. v. NLRC*, 365 Phil. 273, 280-281 (1999).
69 Id. at 276-277.
70 264 Phil. 456 (1990).
71 Id. at 462.

out of the same fund without any precedence over each other.[72]

In *Rizal Commercial Banking Corporation v. Intermediate Appellate Court*,[73] the Court disallowed the foreclosure of the debtor company's property after the latter had filed a Petition for Rehabilitation and Declaration of Suspension of Payments with the SEC. We ruled that whenever a distressed corporation asks the SEC for rehabilitation and suspension of payments, preferred creditors may no longer assert preference but shall stand on equal footing with other creditors. Foreclosure shall be disallowed so as not to prejudice other creditors, or cause discrimination among them. In 1999, the Court qualified this ruling by stating that preferred creditors of distressed corporations shall stand on equal footing with all other creditors only after a rehabilitation receiver or management committee has been appointed.[74] More importantly, the Court laid the guidelines for the treatment of claims against corporations undergoing rehabilitation:

> 1. All claims against corporations, partnerships, or associations that are pending before any court, tribunal, or board, without distinction as to whether or not a creditor is secured or unsecured, shall be suspended effective upon the appointment of a management committee, rehabilitation receiver, board, or body in accordance with the provisions of Presidential Decree No. 902-A.
>
> 2. **Secured creditors retain their preference over unsecured creditors, but enforcement of such preference is equally suspended upon the appointment of a management committee, rehabilitation receiver, board, or body**. In the event that the assets of the corporation, partnership, or association are finally liquidated, however, secured and preferred credits under the applicable provisions of the Civil Code will definitely have preference over unsecured ones.[75] (Emphasis supplied)

Basically, once a management committee or rehabilitation receiver has been appointed in accordance with PD 902-A, no action for claims may be initiated against a distressed corporation and those already pending in court shall be suspended in whatever stage they may be. Notwithstanding, secured

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72 BLACK'S LAW DICTIONARY 1004 (5th ed., 1979).
73 G.R. No. 74851, September 14, 1992, 213 SCRA 830, 838.
74 *Rizal Commercial Banking Corporation v. Intermediate Appellate Court*, 378 Phil. 10, 27 (1999).
75 Id. at 26-27.

creditors shall continue to have preferred status but the enforcement thereof is likewise held in abeyance. However, if the court later determines that the rehabilitation of the distressed corporation is no longer feasible and its assets are liquidated, secured claims shall enjoy priority in payment.

We perceive no good reason to depart from established jurisprudence. While Section 24(d), Rule 4 of the Interim Rules states that contracts and other arrangements between the debtor and its creditors shall be interpreted as continuing to apply, this holds true only to the extent that they do not conflict with the provisions of the plan.

Here, the stipulation in the Assignment Agreement to the effect that respondent Bayantel shall pay petitioners in full and ahead of other creditors out of its cash flow during rehabilitation directly impinges on the provision of the approved Rehabilitation Plan that "[t]he creditors of Bayantel, whether secured or unsecured, should be treated equally and on the same footing or *pari passu* until the rehabilitation proceedings is terminated in accordance with the Interim Rules."

During rehabilitation, the only payments sanctioned by the Interim Rules are those made to creditors in accordance with the provisions of the plan. Pertinent to this is Section 5(b), Rule 4 of the Interim Rules which states that the terms and conditions of the rehabilitation plan shall include the manner of its implementation, *giving due regard to the interests of secured* creditors. This very phrase is what petitioners invoke as basis for demanding priority in payment out of respondent's cash flow.

But petitioners' reliance thereon is misplaced.

By definition, due regard means consideration in a degree appropriate to the demands of a particular case.[76] On the other hand, security interest is a form of interest in property which provides that the property may be sold

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[76] BLACK'S LAW DICTIONARY 450 (5th ed., 1979).

on default in order to satisfy the obligation for which the security interest is given. Often, the term "lien" is used as a synonym, although lien most commonly refers only to interests providing security that are created by operation of law, not through agreement of the debtor and creditor. In contrast, the term "security interest" means any interest in property acquired by contract for the purpose of securing payment or performance of an obligation or indemnifying against loss or liability.[77]

Under the Interim Rules, the only pertinent reference to creditor security is found in Section 12, Rule 4 on relief from, modification or termination of stay order. Said provision states that the creditor is regarded as lacking adequate protection if it can be shown that: (a) the debtor fails or refuses to honor a pre-existing agreement with the creditor to keep the property insured; (b) the debtor fails or refuses to take commercially reasonable steps to maintain the property; or (c) the property has depreciated to an extent that the creditor is undersecured.

Upon a showing that the creditor is lacking in protection, the court shall order the rehabilitation receiver to take steps to ensure that the property is insured or maintained or to make payment or provide replacement security such that the obligation is fully secured. If such arrangements are not feasible, the court may allow the secured creditor to enforce its claim against the debtor. Nonetheless, the court may deny the creditor the foregoing remedies if allowing so would prevent the continuation of the debtor as a going concern or otherwise prevent the approval and implementation of a rehabilitation plan.[78]

In the context of the foregoing provisions, "giving due regard to the interests of secured creditors" primarily entails ensuring that the property comprising the collateral is insured, maintained or replacement security is provided such that the obligation is fully secured. The reason for this rule is

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[77] Id. at 1217.
[78] INTERIM RULES OF PROCEDURE ON CORPORATE REHABILITATION, Rule 4, Section 12.

simple, in the event that the court terminates the proceedings for reasons other than the successful implementation of the plan, the secured creditors may foreclose the securities and the proceeds thereof applied to the satisfaction of their preferred claims.

When the Rules of Procedure on Corporate Rehabilitation took effect on January 16, 2009, the "due regard" provision was amended to read:

> SEC. 18. *Rehabilitation Plan.* – The rehabilitation plan shall include (a) the desired business targets or goals and the duration and coverage of the rehabilitation; (b) the terms and conditions of such rehabilitation which shall include the manner of its implementation, giving due regard to the interests of secured creditors such as, **but not limited, to the non-impairment of their security liens or interests**; x x x. (Emphasis supplied)

Despite the additional phrase, however, it is our view that the amendment simply amplifies the meaning of the "due regard provision" in the Interim Rules. First, the amendment exemplifies what giving "due regard to the interests of secured creditors" contemplates, mainly, the non-impairment of securities. At the same time, the specific reference to "security liens" and "interests," separated by the disjunctive "or," describes what "the interests of secured creditors" consist of. Again, lien pertains only to interests providing security that are created by operation of law while security interests include those acquired by contract for the purpose of securing payment or performance of an obligation or indemnifying against loss or liability. Lastly, the addition of the phrase "but not limited" in the amendment shuns a rigid application of the provision by recognizing that "giving due regard to the interest of secured creditors" may be rendered in other ways than taking care that the security liens and interests of secured creditors are adequately protected.

In this case, petitioners Express Investments III Private Ltd. and Export Development Canada are concerned, not so much with the adequacy of the securities offered by respondent, but with the devaluation of such securities over time. Petitioners fear that the proceeds of respondent's

collateral would be insufficient to cover their claims in the event of liquidation.

On this point, suffice it to state that petitioners are not without any remedy to address a deficiency in securities, if and when it comes about. Under Section 12, Rule 4 of the Interim Rules, a secured creditor may file a motion with the Rehabilitation Court for the modification or termination of the stay order. If petitioners can show that arrangements to insure or maintain the property or to make payment or provide additional security therefor is not feasible, the court shall modify the stay order to allow petitioners to enforce their claim − that is, to foreclose the mortgage and apply the proceeds thereof to their claims. Be that as it may, the court may deny the creditor this remedy if allowing so would prevent the continuation of the debtor as a going concern or otherwise prevent the approval and implementation of a rehabilitation plan.

Indeed, neither the "due regard provision" nor contractual arrangements can shackle the Rehabilitation Court in determining the best means of rehabilitating a distressed corporation. Truth be told, the Rehabilitation Court may approve a rehabilitation plan even over the opposition of creditors holding a majority of the total liabilities of the debtor if, in its judgment, the rehabilitation of the debtor is feasible and the opposition of the creditors is manifestly unreasonable. In determining whether or not the opposition of the creditors is manifestly unreasonable, the court shall consider the following: (a) That the plan would likely provide the objecting class of creditors with compensation greater than that which they would have received if the assets of the debtor were sold by a liquidator within a three-month period; (b) That the shareholders or owners of the debtor lose at least their controlling interest as a result of the plan; and (c) The Rehabilitation Receiver has recommended approval of the plan.[79]

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[79] Id., Rule 4, Section 23.

According to the Liquidation Analysis[80] prepared by KPMG at the request of the Receiver, the Fair Market Value of respondent's fixed assets is ₱18.7 billion while its Forced Liquidation Value is ₱9.3 billion. Together with cash and receivables in the amount of ₱911 million, respondent's total liquidation assets are valued at ₱10.2 billion. From this amount, the estimated liquidation return to the Omnibus Creditors is ₱6,102,150,000 or approximately 52.9% of their claims in the amount of ₱11,539,776,000. Meanwhile, Chattel Creditors can recoup 61% of its claims. As regards the Unsecured Creditors, they will share in the pool of assets that respondents have acquired since 1998, which were not specifically registered under the Omnibus Agreement Mortgage Supplements. Said assets are estimated to have a value of ₱3.5 Billion. This accounts for 10.7% of the Unsecured Creditors' claims.

Reckoned from these figures, the Receiver concluded that the shareholders shall receive nothing on respondent's liquidation while the latter's creditors can expect significantly less than full repayment. Moreover, regardless of whether the shareholders will lose at least their controlling interest as a result of the plan, petitioners, in their Memorandum dated April 30, 2009, have signified their conformity with the Court of Appeals decision to limit the conversion of the unsustainable debt to a maximum of 40% of the fully-paid up capital of respondent corporation. Lastly, the Receiver not only recommended the approval of the Plan by the Rehabilitation Court, he, himself, prepared it. The concurrence of these conditions renders the opposition of petitioners manifestly unreasonable.

As regards the second issue, petitioners submit that the *pari passu* treatment of claims offends the Contract Clause under the 1987 Constitution. Article III, Section 10 of the Constitution mandates that no law impairing the obligation of contracts shall be passed. Any law which enlarges, abridges, or in any manner changes the intention of the parties, necessarily impairs the

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[80] *Rollo* (G.R. Nos. 175418-20), Vol. I, pp. 760-779.

contract itself. And even when the change in the contract is done by indirection, there is impairment nonetheless.[81]

At this point, it bears stressing that the non-impairment clause is a limitation on the exercise of legislative power and not of judicial or quasi-judicial power. In *Lim, Sr. v. Secretary of Agriculture & Natural Resources, et al.*,[82] we held:

> x x x. For it is well-settled that a law within the meaning of this constitutional provision has reference primarily to statutes and ordinances of municipal corporations. Executive orders issued by the President whether derived from his constitutional powers or valid statutes may likewise be considered as such. It does not cover, therefore, the exercise of the quasi-judicial power of a department head even if affirmed by the President. The administrative process in such a case partakes more of an adjudicatory character. It is bereft of any legislative significance. It falls outside the scope of the non-impairment clause. x x x.[83]

The prohibition embraces enactments of a governmental law-making body pertaining to its legislative functions. Strictly speaking, it does not cover the exercise by such law-making body of quasi-judicial power.

Verily, the Decision dated June 28, 2004 of the Rehabilitation Court is not a proper subject of the Non-impairment Clause.

In view of the foregoing, we find no need to discuss the third issue posed in this petition.

In G.R. Nos. 175418-20

Prefatorily, we restate the time honored principle that in a petition for review on *certiorari* under Rule 45 of the Rules of Court, only questions of law may be raised. Thus, in a petition for review on certiorari, the scope of the Supreme Court's judicial review is limited to reviewing only errors of law, not of fact.[84] It is not our function to weigh all over again evidence

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81 J.G. Bernas, THE 1987 CONSTITUTION OF THE PHILIPPINES: A COMMENTARY, 2003 ed., p. 431.
82 145 Phil. 561 (1970).
83 Id. at 577.
84 *Dela Rosa v. Michaelmar Philippines, Inc.*, G.R. No. 182262, April 13, 2011, 648 SCRA 721, 729.

already considered in the proceedings below, our jurisdiction is limited to reviewing only errors of law that may have been committed by the lower court.[85]

Before us, petitioners Bank of New York and Avenue Asia Capital Group raise a question of fact which is not proper in a petition for review on *certiorari*. A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact.[86]

Whether the Court of Appeals erred in affirming the sustainable debt fixed by the Rehabilitation Court is a question of fact that calls for a recalibration of the evidence presented by the parties before the trial court. In order to resolve said issue, petitioners would have this Court reassess the state of respondent Bayantel's finances at the onset of rehabilitation and gauge the practical value of the plans submitted by the parties vis-à-vis the financial models prepared by the experts engaged by them. These tasks are certainly not for this Court to accomplish. The resolution of factual issues is the function of lower courts, whose findings on these matters are received with respect.[87] This is especially true in rehabilitation proceedings where certain courts are designated to hear the case on account of their expertise and specialized knowledge on the subject matter. Though this doctrine admits of several exceptions,[88] none is applicable in the case at bar.

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85 *Vallacar Transit, Inc. v. Catubig*, G.R. No. 175512, May 30, 2011, 649 SCRA 281, 293-294.

86 *Tirazona v. Court of Appeals*, G.R. No. 169712, March 14, 2008, 548 SCRA 560, 581.

87 *Vallacar Transit, Inc. v. Catubig,* supra note 85 at 294.

88 Id. The findings of fact of the Court of Appeals are generally conclusive but may be reviewed when: (1) the factual findings of the Court of Appeals and the trial court are contradictory; (2) the findings are grounded entirely on speculation, surmises or conjectures; (3) the inference made by the Court of Appeals from its findings of fact is manifestly mistaken, absurd or impossible; (4) there is grave abuse of discretion in the appreciation of facts; (5) the appellate court, in making its findings, goes beyond

Notably, the Interim Rules is silent on the manner by which the sustainable debt of the debtor shall be determined. Yet, Section 2 of the Interim Rules prescribe that the Rules shall be liberally construed to carry out the objectives of Sections 5(d),[89] 6(c)[90] and 6(d)[91] of PD 902-A.

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the issues of the case and such findings are contrary to the admissions of both appellant and appellee; (6) the judgment of the Court of Appeals is premised on a misapprehension of facts; (7) the Court of Appeals fails to notice certain relevant facts which, if properly considered, will justify a different conclusion; and (8) the findings of fact of the Court of Appeals are contrary to those of the trial court or are mere conclusions without citation of specific evidence, or where the facts set forth by the petitioner are not disputed by respondent, or where the findings of fact of the Court of Appeals are premised on the absence of evidence but are contradicted by the evidence on record.

[89] SEC. 5. In addition to the regulatory and adjudicative functions of the Securities and Exchange Commission over corporations, partnerships and other forms of associations registered with it as expressly granted under existing laws and decrees, it shall have original and exclusive jurisdiction to hear and decide cases involving:

x x x x;

d) Petitions of corporations, partnerships or associations to be declared in the state of suspension of payments in cases where the corporation, partnership or association possesses sufficient property to cover all its debts but foresees the impossibility of meeting them when they respectively fall due or in cases where the corporation, partnership or association has no sufficient assets to cover its liabilities, but is under the management of a Rehabilitation Receiver or Management Committee created pursuant to this Decree.

[90] SEC. 6. In order to effectively exercise such jurisdiction, the Commission shall possess the following powers:

x x x x;

c) To appoint one or more receivers of the property, real and personal, which is the subject of the action pending before the Commission in accordance with the pertinent provisions of the Rules of Court in such other cases whenever necessary in order to preserve the rights of the parties-litigants and/or protect the interest of the investing public and creditors: *Provided, however*, That the Commission may, in appropriate cases, appoint a rehabilitation receiver of corporations, partnerships or other associations not supervised or regulated by other government agencies who shall have, in addition to the powers of a regular receiver under the provisions of the Rules of Court, such functions and powers as are provided for in the succeeding paragraph d) hereof: *Provided, further*, That the Commission may appoint a rehabilitation receiver of corporations, partnerships or other associations supervised or regulated by other government agencies, such as banks and insurance companies, upon request of the government agency concerned: *Provided, finally*, That upon appointment of a management committee, rehabilitation receiver, board or body, pursuant to this Decree, all actions for claims against corporations, partnerships or associations under management or receivership pending before any court, tribunal, board or body shall be suspended accordingly.

[91] SEC. 6. In order to effectively exercise such jurisdiction, the Commission shall possess the following powers:

x x x x;

d) To create and appoint a management committee, board, or body upon petition or *motu proprio* to undertake the management of corporations, partnerships or other associations not supervised or regulated by other government agencies in appropriate cases when there is imminent danger of dissipation, loss, wastage or destruction of assets or other properties or paral[y]zation of business operations of such corporations or entities which may be prejudicial to the interest of minority stockholders, parties-litigants or the general public: *Provided, further*, That the Commission may create or appoint a management committee, board or body to undertake the management of corporations, partnerships or other associations supervised or regulated by other government agencies, such as banks and insurance companies, upon request of the government agency concerned.

The management committee or rehabilitation receiver, board or body shall have the power to take custody of, and control over, all the existing assets and property of such entities under management; to evaluate the existing assets and liabilities, earnings and operations of such corporations, partnerships or other associations; to determine the best way to salvage and protect the interest of the investors and creditors; to study, review and evaluate the feasibility of continuing operations and restructure and rehabilitate such entities if determined to be feasible by the Commission. It shall report and be responsible to the Commission until dissolved by order of the Commission: *Provided, however*, That the Commission may, on the basis of the findings and recommendation of the management committee, or rehabilitation receiver, board or body, or on its own findings, determine that the continuance in

Section 5(d), PD 902-A vested jurisdiction upon the SEC over petitions for rehabilitation. Later, RA 8799 or the Securities Regulation Code, amended Section 5(d) of PD 902-A by transferring SEC's jurisdiction over said petitions to the RTC. Meanwhile, Section 6(c) of PD 902-A provides for the appointment of a receiver of the subject property whenever necessary in order to preserve the rights of the parties and to protect the interest of the investing public and the creditors. Upon the appointment of such receiver, all actions for claims against the corporation pending before any court, tribunal, board or body shall be suspended accordingly. On the other hand, Section 5(d), PD 902-A expands the power of the Commission to allow the creation and appointment of a management committee to undertake the management of the corporation when there is imminent danger of dissipation, loss, wastage or destruction of assets or other properties or paralyzation of the business of the corporation which may be prejudicial to the interest of minority stockholders, parties-litigants or the general public.

The underlying objective behind these provisions is to foster the rehabilitation of the debtor by insulating it against claims, preserving its assets and taking steps to ensure that the rights of all parties concerned are adequately protected.

This Court is convinced that the Court of Appeals ruled in accord with this policy when it upheld the Rehabilitation Court's determination of respondent's sustainable debt. We find the sustainable debt of US$325 million, spread over 19 years, to be a more realistically achievable amount considering respondent's modest revenue projections. Bayantel projected a constant rise in its revenues at the range of 1.16%-4.91% with periodic

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business of such corporation or entity would not be feasible or profitable nor work to the best interest of the stockholders, parties-litigants, creditors, or the general public, order the dissolution of such corporation entity and its remaining assets liquidated accordingly. The management committee or rehabilitation receiver, board or body may overrule or revoke the actions of the previous management and board of directors of the entity or entities under management notwithstanding any provision of law, articles of incorporation or by-laws to the contrary.

The management committee, or rehabilitation receiver, board or body shall not be subject to any action, claim or demand for, or in connection with, any act done or omitted to be done by it in good faith in the exercise of its functions, or in connection with the exercise of its power herein conferred.

reverses every two years.[92] On the other hand, petitioner's proposal of a sustainable debt of US$471 million to be paid in 12 years and the Receiver's proposal of US$370 million to be paid in 15 years betray an over optimism that could leave Bayantel with nothing to spend for its operations.

Next, petitioners contest the admission of respondent's rehabilitation plan for being filed in violation of the Interim Rules. It is petitioner's view that in a creditor-initiated petition for rehabilitation, the debtor may only submit either a comment or opposition but not its own rehabilitation plan.

We cannot agree.

Rule 4 of the Interim Rules treats of rehabilitation in general, without distinction as to who between the debtor and the creditor initiated the petition. Nowhere in said Rule is there any provision that prohibits the debtor in a creditor-initiated petition to file its own rehabilitation plan for consideration by the court. Quite the reverse, one of the functions and powers of the rehabilitation receiver under Section 14(m) of said Rule is to study the rehabilitation plan *proposed by the debtor* or any rehabilitation plan submitted during the proceedings, together with any comments made thereon. This provision makes particular reference to a debtor-initiated proceeding in which the debtor principally files a rehabilitation plan. In such case, the receiver is tasked, among other things, to study the rehabilitation plan presented by the debtor along with any rehabilitation plan submitted during the proceedings. This implies that the creditors of the distressed corporation, and even the receiver, may file their respective rehabilitation plans. We perceive no good reason why the same option should not be available, by analogy, to a debtor in creditor-initiated proceedings, which is also found in Rule 4 of the Interim Rules.

Third, petitioners fault the Court of Appeals for ruling that the debt-to-equity conversion rate of 77.7%, as proposed by The Bank of New York,

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92 *Rollo* (G.R. Nos. 175418-20), Vol. I, pp. 408-409.

violates the Filipinization provision of the Constitution. Petitioners explain that the acquisition of shares by foreign Omnibus and Financial Creditors shall be done, both directly and indirectly in order to meet the control test principle under RA 7042[93] or the Foreign Investments Act of 1991. Under the proposed structure, said creditors shall own 40% of the outstanding capital stock of the telecommunications company on a direct basis, while the remaining 40% of shares shall be registered to a holding company that shall retain, on a direct basis, the other 60% equity reserved for Filipino citizens.

Moreover, petitioners maintain that it is only fair to impose upon the Omnibus and Financial Creditors a bigger equity conversion in Bayantel considering that petitioners will bear the bulk of the accrued interests and penalties to be written off. Initially, the Rehabilitation Court approved the Receiver's recommendation to write-off interests and penalties in the amount of US$34,044,553.00. The Rehabilitation Court likewise ordered a re-computation of past due interest in accordance with the rate proposed by the Receiver. Following this, petitioners estimate the total unpaid accrued interest of Bayantel as of July 30, 2003 to be at US$140,098,750.66 while the Rehabilitation Court arrived at the total amount of past due interest and penalties of US$114,855,369.59 upon recomputation. This makes for a difference of US$25,243,381.07 which, petitioners claim, represents an additional write-off to be borne by them for a total write-off of US$59,287,934.07.

The provision adverted to is Article XII, Section 11 of the 1987 Constitution which states:

> SEC. 11. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty *per centum* of whose capital is owned by such citizens, nor shall such franchise, certificate or authorization be exclusive in character or for a longer period than fifty years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the

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[93] AN ACT TO PROMOTE FOREIGN INVESTMENTS, PRESCRIBE THE PROCEDURES FOR REGISTERING ENTERPRISES DOING BUSINESS IN THE PHILIPPINES, AND FOR OTHER PURPOSES.

> Congress when the common good so requires. The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines.

This provision explicitly reserves to Filipino citizens control over public utilities, pursuant to an overriding economic goal of the 1987 Constitution: to "conserve and develop our patrimony" and ensure "a self-reliant and independent national economy ***effectively controlled*** by Filipinos."[94]

In the recent case of *Gamboa v. Teves,*[95] the Court settled once and for all the meaning of "capital" in the above-quoted Constitutional provision limiting foreign ownership in public utilities. In said case, we held that considering that common shares have voting rights which translate to control as opposed to preferred shares which usually have no voting rights, the term "capital" in Section 11, Article XII of the Constitution refers only to common shares. However, if the preferred shares also have the right to vote in the election of directors, then the term "capital" shall include such preferred shares because the right to participate in the control or management of the corporation is exercised through the right to vote in the election of directors. In short, the term "capital" in Section 11, Article XII of the Constitution refers only to shares of stock that can vote in the election of directors.

Applying this, two steps must be followed in order to determine whether the conversion of debt to equity in excess of 40% of the outstanding capital stock violates the constitutional limit on foreign ownership of a public utility: *First,* identify into which class of shares the debt shall be converted, whether common shares, preferred shares that have the right to vote in the election of directors or non-voting preferred shares; *Second,*

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94 *Gamboa v. Teves*, G.R. No. 176579, June 28, 2011, 652 SCRA 690, 716. Emphasis and italics in the original.

95 Id. at 726.

determine the number of shares with voting right held by foreign entities prior to conversion. If upon conversion, the total number of shares held by foreign entities exceeds 40% of the capital stock with voting rights, the constitutional limit on foreign ownership is violated. Otherwise, the conversion shall be respected.

In its Rehabilitation Plan,[96] among the material financial commitments made by respondent Bayantel is that its shareholders shall "relinquish the agreed-upon amount of common stock[s] as payment to Unsecured Creditors as per the Term Sheet."[97] Evidently, the parties intend to convert the unsustainable portion of respondent's debt into common stocks, which have voting rights. If we indulge petitioners on their proposal, the Omnibus Creditors which are foreign corporations, shall have control over 77.7% of Bayantel, a public utility company. This is precisely the scenario proscribed by the Filipinization provision of the Constitution. Therefore, the Court of Appeals acted correctly in sustaining the 40% debt-to-equity ceiling on conversion.

As to the fourth issue, petitioners insist that the write-off of the default interest and penalties along with the re-computation of past due interest violate the *pari passu* treatment of creditors.

Petitioner's argument lacks merit.

Section 5(d), Rule 4 of the Interim Rules provides that the rehabilitation plan shall include the means for the execution of the rehabilitation plan, which may include conversion of the debts or any portion thereof to equity, restructuring of the debts, *dacion en pago*, or sale of assets or of the controlling interest.

Debt restructuring may involve conversion of the debt or any portion thereof to equity, sale of the assets of the distressed company and application

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96 *Rollo* (G.R. Nos. 175418-20), Vol. I, pp. 373-431.
97 Id. at 429.

of the proceeds to the obligation, *dacion en pago*, debt relief or reduction, modification of the terms of the loan or a combination of these schemes.

In this case, the approved Rehabilitation Plan provided for a longer period of payment, the conversion of debt to 40% equity in respondent company, modification of interest rates on the restructured debt and accrued interest and a write-off or relief from penalties and default interest. These recommendations by the Receiver are perfectly within the powers of the Rehabilitation Court to adopt and approve, as it did adopt and approve. In so doing, no reversible error can be attributed to the Rehabilitation Court.

The pertinent portion of the *fallo* of said court's Decision dated June 28, 2004 states:

> 1. The ruling on **the pari passu treatment of all creditors** whose claims are subject to restructuring shall be maintained and **shall extend to all payment terms and treatment of past due interest.**[98] (Emphasis supplied)

Thus, the court *a quo* provided for a uniform application of the *pari passu* principle among creditor claims and the terms by which they shall be paid, including past due interest. This is consistent with the interpretation accorded by jurisprudence to the *pari passu* principle that during rehabilitation, the assets of the distressed corporation are held in trust for the equal benefit of all creditors to preclude one from obtaining an advantage or preference over another. All creditors should stand on equal footing. Not any one of them should be given preference by paying one or some of them ahead of the others.[99]

As applied to this case, the *pari passu* treatment of claims during rehabilitation entitles all creditors, whether secured or unsecured, to receive payment out of Bayantel's cash flow. Despite their preferred position, therefore, the secured creditors shall not be paid ahead of the unsecured

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98 Id. at 1028.

99 *Alemar's Sibal & Sons, Inc. v. Judge Elbinias*, supra note 71.

creditors but shall receive payment only in the proportion owing to them.

In any event, the debt restructuring schemes complained of shall be implemented among all creditors regardless of class. Both secured and unsecured creditors shall suffer a write-off of penalties and default interest and the escalating interest rates shall be equally imposed on them. We repeat, the commitment embodied in the *pari passu* principle only goes so far as to ensure that the assets of the distressed corporation are held in trust for the equal benefit of all creditors. It does not espouse absolute equality in all aspects of debt restructuring.

As regards petitioners' claims for costs, petitioner Bank of New York filed before the Rehabilitation Court a Notice of Claim[100] dated February 19, 2004 for the payment of US$1,255,851.30, representing filing fee, deposit for expenses and the professional fees of its counsels and financial advisers. Earlier, said bank had filed a claim for the payment of US$863,829.98 for professional fees of its counsels and professional advisers and ₱2,850,305.00 for docket fees and publication expenses. On its end, the Avenue Asia Capital Group claims a total of US$535,075.64 to defray the professional fees of its financial adviser, Price Waterhouse & Cooper and the Bondholder Communications Group.

In an Order[101] dated March 15, 2005, the Rehabilitation Court approved the claims for costs of petitioner Bank of New York as follows:

> i. filing fees of P2,701,750.00 as evidenced by O.R. Nos. 18463998, 18466286 and 0480246 all dated August 13, 2003 of the Regional Trial Court (of Pasig City);
>
> ii. costs of publication of the Stay Order in the amount of P47,550.00 as evidenced by O.R. No. 86384 dated August 13, 2003 of the Peoples Independent Media, Inc.,
>
> the same being judicial costs authorized under Sec. 1, Rule 142 of the Rules of Court;
>
> iii. payments of professional fees to its Philippine Counsel,

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[100] *Rollo* (G.R. Nos. 175418-20), Vol. I, pp. 542-548.
[101] Id. at 1624-1629.

> Belo Gozon Elma Parel Asuncion & Lucila, in the total amount of US$152,784.32 as evidenced by the Affidavit of Atty. Roberto Rafael V. Lucila and the Statements of Account attached thereto;
>
> which the Court considers to be reasonable and finds authorized under Sec. 6.11 and 6.12 of the Indenture attached as Annex "E" to the Petition;
>
> The Receiver is hereby directed to cause the settlement of payment of the accounts within a period of sixteen (16) months from receipt of this Order.[102]

The trial court made no pronouncement on the claims for cost of petitioner Avenue Asia Capital Group, either in the same Order or in a subsequent order.

Before us, petitioners reiterate their claims for costs based on Sections 6.11[103] and 6.12[104] of the Indenture[105] dated July 22, 1999, which was executed by respondent in their favor.

It bears stressing at this point that the subject of petitioners' appeal before the Court of Appeals was the Rehabilitation Court's Decision dated June 28, 2004. Said Decision, however, bore no discussion on either

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102 Id. at 1626.

103 SECTION 6.11. Collection Suit by Trustee. If an Event of Default in payment of principal, premium, if any, interest, Additional Amounts, if any, or Liquidated Damages, if any, specified in Section 6.1(a) or (b) occurs and is continuing, **the Trustee may recover judgment in its own name and as trustee** of an express trust against the Company or any other obligor on the Notes **for the whole amount of principal and accrued interest remaining unpaid, together with interest on overdue principal and, to the extent that payment of such interest is lawful, interest on overdue installments of interest,** in each case at the rate per annum borne by the Notes and such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agent and counsel, and any other amounts due the Trustee under Section 7.7. (Emphasis supplied) [*Rollo* (G.R. Nos. 174457-59), Vol. I, p. 472.]

104 SECTION 6.12. Trustee May File Proofs of Claim. The Trustee may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee **(including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, accountants and experts**) and the Holders allowed in any judicial proceedings relating to the Company, its creditors or its property or other obligor on the Notes, its creditors and its property and shall be entitled and empowered to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same, and any Custodian in any such judicial proceedings is hereby authorized by each Holder to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agent and counsel, and any other amounts due the Trustee under Section 7.7. To the extent that the payment of any such compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.7 hereof out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a Lien on, and shall be paid out of, any and all distributions, dividends, money, securities and other properties which the Holders of the Notes may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise. (Emphasis supplied) (Id. at 73.)

105 *Rollo* (G.R. Nos. 174457-59), Vol. I, pp. 402-570.

petitioners' claim for costs from which they may appeal. Notably, the assailed Order of the Rehabilitation Court was promulgated on March 15, 2005 or four (4) months after petitioners had appealed the Decision dated June 28, 2004 to the Court of Appeals on November 16, 2004. Evidently, the appellate court could not have acquired jurisdiction to review said Order.

Nonetheless, we doubt the propriety of the Rehabilitation Court's award for costs. A perusal of the Order dated March 15, 2005 reveals that the award to petitioner Bank of New York was made pursuant to Section 1, Rule 142 of the Rules of Court, which states:

> SECTION 1. *Costs ordinarily follow results of suit*.- Unless otherwise provided in these Rules, **costs shall be allowed to the prevailing party** as a matter of course, but the court shall have power, for special reasons, to adjudge that either party shall pay the costs of an action, or that the same be divided, as may be equitable. No costs shall be allowed against the Republic of the Philippines unless otherwise provided by law. (Emphasis supplied)

However, there is no prevailing party in rehabilitation proceedings which is non-adversarial in nature.[106] Unlike in adversarial proceedings, the court in rehabilitation proceedings appoints a receiver to study the best means to revive the debtor and to ensure that the value of the debtor's property is reasonably maintained pending the determination of whether or not the debtor should be rehabilitated, as well as implement the rehabilitation plan after its approval.[107] The main thrust of rehabilitation is not to adjudicate opposing claims but to restore the debtor to a position of successful operation and solvency. Under the Interim Rules, reasonable fees and expenses are allowed the Receiver and the persons hired by him,[108] for those expenses incurred in the ordinary course of business of the debtor after the issuance of the stay order but excluding interest to creditors.[109]

Moreover, while it is true that the Indenture between petitioners and respondent corporation authorizes the Trustee to file proofs of claim for the

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106 INTERIM RULES OF PROCEDURE ON CORPORATE REHABILITATION, Rule 3, Section 1.
107 Id., Rule 4, Section 14.
108 Id., Rule 4, Section 16.
109 Id., Rule 2, Section 1.

payment of reasonable expenses and disbursements of the Trustee, its agents and counsel, accountants and experts, such remedy is available only in cases where the Trustee files a collection suit against respondent company. Indubitably, the rehabilitation proceedings in the case at bar is not a collection suit, which is adversarial in nature.

In G.R. No. 177270

At issue in this petition for review on certiorari is the extent of power that the Monitoring Committee can exercise.

The pertinent portion of the *fallo* of the Decision dated June 28, 2004 provides:

> 6. A Monitoring Committee shall be formed composed of representatives from all classes of the restructured debt. The Rehabilitation Receiver's role shall be limited to the powers of monitoring and oversight as provided in the Interim Rules. All powers provided for in the Report and Recommendations, which exceed the monitoring and oversight functions mandated by the Interim Rules shall be amended accordingly.[110]

On October 15, 2004, petitioner Bank of New York filed a Manifestation with the Rehabilitation Court for the creation of a monitoring committee in accordance with the aforequoted pronouncement. Petitioner espouses the view that it is essential to "provide for a strong and effective Monitoring Committee x x x which gives the Financial Creditors meaningful and substantial participation in Bayantel."[111] It went on to propose the powers that the Monitoring Committee should possess, specifically:

> The role of the Monitoring Committee shall be to work with the Receiver (on precise terms to be agreed as discussed below) to Oversee the actions of the BTI New Board of Directors, making key Decisions and **approving**, amongst other things,
>
> (i) Any proposed Events of Rescheduling;
>
> (ii) Any other proposed actions by the receiver on a payment default;

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[110] *Rollo* (G.R. No. 177270), Vol. I, pp. 507-508.
[111] *Rollo* (G.R. Nos. 175418-20), Vol. I, p. 1075.

(iii) Operating Expenses Budgets;

(iv) Capital Expenditure Budgets;

(v) Asset Sales Programs; and

(vi) Terms of Incentive Scheme for New Management and Management Targets.[112]

Subsequently, in an Order[113] dated November 9, 2004, the Rehabilitation Court adopted petitioner's proposal by constituting a Monitoring Committee that

> shall participate with the Receiver in monitoring and overseeing the actions of the Board of Directors of Bayantel and may, by majority vote, **adopt, modify, revise or substitute** any of the following items:
>
> (1) any proposed Annual OPEX Budgets;
>
> (2) any proposed Annual CAPEX Budgets;
>
> (3) any proposed Reschedule;
>
> (4) any proposed actions by the Receiver on a payment default;
>
> (5) terms of Management Incentivisation Scheme and Management Targets;
>
> **(6) the EBITDA/Revenue ratios set by the Bayantel Board of Directors; and,**
>
> **(7) any other proposed actions by the Bayantel Board of Directors including, without limitation, issuance of new shares, sale of core and non-core assets, change of business, etc. that will materially affect the terms and conditions of the rehabilitation plan and its implementation**.[114] (Emphasis supplied)

From said Order, respondent Bayantel filed a Manifestation and Motion for Clarification while the secured creditors moved for an increase in the membership of the monitoring committee from three to five members. For his part, the Receiver submitted a Compliance and Manifestation dated January 10, 2005.

In an Order[115] dated March 15, 2005, the Rehabilitation Court affirmed

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112 Id. at 1071.
113 Id. at 1096-1098.
114 Id. at 1097.
115 *Rollo* (G.R. No. 177270), Vol. I, pp. 609-614.

the creation of a monitoring committee but denied the motion for the appointment of additional members therein. It also made the following dispositions relative to the functions of the Monitoring Committee:

> (d) to approve the Implementing Term Sheet submitted by the Receiver subject to the following conditions:
>
> x x x x
>
> ii. **the Receiver shall design and formulate with the participation of the Monitoring Committee and Bayantel the convertible debt instrument**, as directed of him in the earlier Order of November 9, 2004, for the unsustainable portion of the restructured debt of Bayantel and submit the same to the Court within thirty (30) days from receipt of this Order. Costs, expenses and taxes that may be due on the execution of the convertible debt instrument shall be charged to Bayantel as costs of the rehabilitation proceedings;
>
> x x x x
>
> iv. the Receiver shall devise a mode or procedure whereby **the Monitoring Committee can have immediate and direct access to any information** that the Receiver has obtained or received from Bayantel or the Monitoring Accountant **in regard to the management and business operations of Bayantel**;
>
> v. the trading of debt mentioned in the Implementing Term Sheet shall be governed by the pre-petition documents which do not conflict with the Decision of this Court and provided that no transfer shall be made to the Bayantel Group Companies, or any controlling shareholders thereof including Bayan Telecommunications Holdings Corporation ("BTHC"); however, any "buy back" scheme **as may be approved by the Monitoring Committee** and Bayantel shall be open to all creditors whether secured or unsecured;[116] (Emphasis supplied)

On appeal, the Court of Appeals nullified the Orders dated November 9, 2004 and March 15, 2005 insofar as they defined the powers and functions of the Monitoring Committee. The appellate court ruled that the Rehabilitation Court committed grave abuse of discretion in vesting the Monitoring Committee with powers beyond monitoring and overseeing Bayantel's operations.

Before us, petitioner contends that the Rehabilitation Court intended for the Monitoring Committee to exercise powers greater than those of the Receiver.

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[116] Id. at 611-613.

We find no merit in petitioner's argument.

In the Decision dated June 28, 2004, the Rehabilitation Court discussed the circumstances surrounding the creation of the monitoring committee, thus:

> Both Bayantel and the Opposing Creditors contend that the Rehabilitation Receiver, under his Report and Recommendations, appear to be vested with too much discretion in the implementation of his proposed rehabilitation plan. Bayantel and the Opposing Creditors for one, argue against the power of the Rehabilitation Receiver to be able to further restructure Restructured Debt as well as the Rehabilitation Receiver's power relating to matters of Bayantel's budget.
>
> The [c]ourt wishes to stress that the Interim Rules prohibit the Rehabilitation Receiver from taking over the management and control of the company under rehabilitation, and limit his role to merely overseeing and monitoring the operations of the company (Section 14, Rule 4, Interim Rules). However, the [c]ourt also appreciates that the Rehabilitation Receiver must oversee the implementation of the rehabilitation plan as approved by the [c]ourt. In line with petitioner's proposal, **the creation of a Monitoring Committee composed of representatives from all classes of the restructured debt addresses the concerns raised by the creditors**.[117] (Emphasis supplied)

It can be gleaned from the foregoing that the Rehabilitation Court's decision to form a monitoring committee was borne out of creditors' concerns over the possession of vast powers by the Receiver. While the Rehabilitation Court was quick to delineate the Receiver's authority, it nevertheless, underscored the value of his role in overseeing the implementation of the Plan. It was on this premise that the Rehabilitation Court appointed the Monitoring Committee - to "[address] the concerns raised by the creditors." Yet, in its Orders dated November 9, 2004 and March 15, 2005, the Rehabilitation Court equipped the Monitoring Committee with powers well beyond those of the Receiver's. Apart from control over respondent's budget, the Monitoring Committee may also adopt, modify, revise or even substitute any other proposed actions by respondent's Board of Directors, including, without limitation issuance of new shares, sale of core and non-core assets, change of business and others that will materially affect the terms and conditions of the rehabilitation plan and its

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[117] Id. at 505-506.

implementation. Ironically, the court *a quo* diluted the seeming concentration of power in the hands of the Receiver but appointed a Committee possessed of even wider discretion over respondent's operations.

From all indications, however, the tenor of the Rehabilitation Court's Decision dated June 28, 2004 does not contemplate the creation of a Monitoring Committee with broader powers than the Receiver. As the name of the Monitoring Committee itself suggests, its job is "to watch, observe or check especially for a special purpose."[118] In the context of the Decision dated June 28, 2004, the fundamental task of the Monitoring Committee herein is to oversee the implementation of the rehabilitation plan as approved by the court. This should not be confused with the functions of the Receiver under the Interim Rules or a management committee under PD 902-A.

Under Section 14, Rule 4 of the Interim Rules, the Receiver shall not take over the management and control of the debtor but shall closely oversee and monitor its operations during the pendency of the rehabilitation proceeding. The Rehabilitation Receiver shall be considered an officer of the court and his core duty is to assess how best to rehabilitate the debtor and to preserve its assets pending the determination of whether or not it should be rehabilitated and to implement the approved plan.

It is a basic precept in Corporation Law that the corporate powers of all corporations formed under *Batas Pambansa Blg.* 68 or the Corporation Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors or trustees. Nonetheless, PD 902-A presents an exception to this rule.

Section 6(d)[119] of PD 902-A empowers the Rehabilitation Court to create and appoint a management committee to undertake the management of corporations when there is imminent danger of dissipation, loss, wastage

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[118] WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1460 (Unabridged ed.).
[119] Supra note 91.

or destruction of assets or other properties or paralyzation of business operations of such corporations which may be prejudicial to the interest of minority stockholders, parties-litigants or the general public. In the case of corporations supervised or regulated by government agencies, such as banks and insurance companies, the appointment shall be made upon the request of the government agency concerned. Otherwise, the Rehabilitation Court may, upon petition or *motu proprio*, appoint such management committee.

The management committee or rehabilitation receiver, board or body shall have the following powers: (1) to take custody of, and control over, all the existing assets and property of the distressed corporation; (2) to evaluate the existing assets and liabilities, earnings and operations of the corporation; (3) to determine the best way to salvage and protect the interest of the investors and creditors; (4) to study, review and evaluate the feasibility of continuing operations and restructure and rehabilitate such entities if determined to be feasible by the Rehabilitation Court; and (5) it may overrule or revoke the actions of the previous management and board of directors of the entity or entities under management notwithstanding any provision of law, articles of incorporation or by-laws to the contrary.

In this case, petitioner neither filed a petition for the appointment of a management committee nor presented evidence to show that there is imminent danger of dissipation, loss, wastage or destruction of assets or other properties or paralyzation of business operations of respondent corporation which may be prejudicial to the interest of the minority stockholders, the creditors or the public. Unless petitioner satisfies these requisites, we cannot sanction the exercise by the Monitoring Committee of powers that will amount to management of respondent's operations.

WHEREFORE, the Court hereby **RESOLVES** to dispose of these consolidated petitions, as follows:

(1) The petition for review on certiorari in G.R. Nos. 174457-59 is

DENIED. The Decision dated August 18, 2006 of the Court of Appeals in CA-G.R. SP No. 87203 is **AFFIRMED**;

(2) The petition for review on certiorari in G.R. Nos. 175418-20 is **DENIED.** The Decision dated August 18, 2006 and Resolution dated November 8, 2006 of the Court of Appeals in CA-G.R. SP Nos. 87100 and 87111 are **AFFIRMED**; and

(3) The petition for review on certiorari in G.R. No. 177270 is **DENIED**. The Decision dated October 27, 2006 and Resolution dated March 23, 2007 of the Court of Appeals in CA-G.R. SP No. 89894 are **AFFIRMED**.

No pronouncement as to costs.

SO ORDERED.

MARTIN S. VILLARAMA, JR.
Associate Justice

WE CONCUR:

TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson

LUCAS P. BERSAMIN
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

BIENVENIDO L. REYES
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson, First Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the 1987 Constitution and the Division Acting Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Acting Chief Justice