Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

SARA LEE PHILIPPINES, INC., **G.R. No. 180147**
Petitioner,

-versus-

EMILINDA D. MACATLANG, ET AL.,[1]
Respondents.
x - x

ARIS PHILIPPINES, INC., **G.R. No. 180148**
Petitioner,

-versus-

EMILINDA D. MACATLANG, ET AL.,
Respondents.
x - x

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[1] Due to the sheer number of complainants, the names of the 5,983 others were omitted but which could be found in the annexes of the Labor Arbiter's decision. See *Rollo* (G.R. No. 180147), pp. 230-348.

SARA LEE CORPORATION,
Petitioner,

G.R. No. 180149

-versus-

EMILINDA D. MACATLANG, ET AL.,
Respondents.
x - x

CESAR C. CRUZ,
Petitioner,

G.R. No. 180150

-versus-

EMILINDA D. MACATLANG, ET AL.,
Respondents.
x - x

FASHION ACCESSORIES PHILS., INC.,
Petitioner,

G.R. No. 180319

-versus-

EMILINDA D. MACATLANG, ET AL.,
Respondents.
x - x

EMILINDA D. MACATLANG, ET AL.,
Petitioners,

G.R. No. 180685

-versus-

NLRC, ARIS PHILIPPINES, INC., FASHION ACCESSORIES PHILS., INC., SARA LEE CORPORATION, SARA LEE PHILIPPINES, INC., COLLIN BEAL and ATTY. CESAR C. CRUZ,
Respondents.
x----------x

Present:

CARPIO, *J.*,
Chairperson,
BRION,
DEL CASTILLO,
PEREZ, and
PERLAS-BERNABE, *JJ.*

Promulgated:

JUN 04 2014

D E C I S I O N

PEREZ, *J.*:

The dilemma of the appeal bond in labor cases is epochal, present whenever the amount of monetary award becomes debatably impedimental to the completion of remedies. Such instances exaggerate the ambivalence between rigidity and liberality in the application of the requirement that the bond must be equal to the arbiter's award. The rule of reasonableness in the determination of the compliant amount of the bond has been formulated to allow the review of the arbiter's award. However, that rule seemingly becomes inadequate when the award staggers belief but is, nonetheless, supported by the premises of the controversy. The enormity of the award cannot prevent the settlement of the dispute. The amount of award may vary case-to-case. But the law remains constant.

Before us are six (6) consolidated petitions for review on *certiorari* pertaining to the ₱3,453,664,710.66 (₱3.45 Billion) appeal bond, which, as mandated by Article 233 of the Labor Code, is equivalent to the monetary award adjudged by the labor arbiter in the cases. The first 5 petitions seek a relaxation of the rule while the last petition urges its strict interpretation.

Petitioners in G.R. Nos. 180147, 180148, 180149, 180150, and 180319 are Sara Lee Philippines, Inc. (SLPI), Aris Philippines, Inc. (Aris), Sara Lee Corporation (SLC), Atty. Cesar Cruz (Cruz), and Fashion Accessories Philippines, Inc. (FAPI), respectively and shall be collectively referred to as the "Corporations."

SLPI is a domestic corporation engaged in the manufacture and distribution of personal care products and is a subsidiary of SLC.

Aris is a domestic corporation engaged in the business of producing gloves and other apparel.[2]

FAPI is a corporation engaged in the manufacture of knitted products.[3]

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2 *Rollo* (G.R. No. 180319, Vol. I), p. 12.

3 Id. at 49-50.

SLC, a corporation duly organized and existing under the laws of the United States of America, is a stockholder of Aris. It exercised control over Aris, FAPI, and SLPI which were all its subsidiaries or affiliates.[4]

Cruz was the external counsel of Aris at the time of its closure. When Aris filed for its dissolution, Cruz became the Vice-President and Director of Aris.[5]

The petition docketed as G.R. No. 180685 is filed by Emilinda D. Macatlang and 5,983 other former employees of Aris. Emilinda D. Macatlang allegedly represents the employees whose employment was terminated upon the closure of Aris.

I.

This controversy stemmed from a Notice of Permanent Closure filed by Aris on 4 September 1995 with the Department of Labor and Employment stating that it will permanently cease its operations effective 9 October 1995. All employees of Aris were duly informed.

Aris Philippines Workers Confederation of Filipino Workers (Union), which represents 5,984[6] rank-and-file employees of Aris, staged a strike for violation of duty to bargain collectively,[7] union busting and illegal closure.[8]

After conciliation, the parties entered into an agreement whereby Aris undertook to pay its employees the benefits which accrued by virtue of the company's closure, which settlement amounted to ₱419 Million[9] and an additional ₱15 Million[10] Benevolent Fund to the Union.

On 26 October 1995, FAPI was incorporated.[11] When said incorporation came to the knowledge of the affected employees, they all filed 63 separate complaints against Aris for illegal dismissal. The

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4 Id. at 13.

5 *Rollo* (G.R. No. 180150), p. 14.

6 The original number of complainants is 7,637, however upon counter-checking, the number was reduced to 5,984 because a good number of complainants filed their complaints several times. See Labor Arbiter Decision. *Rollo* (G.R. No. 180147), p.197.

7 The Union submitted a proposal for the renegotiation of the CBA but Aris gave no counterproposal. Thereafter, Aris sent a notice of closure to all its employees. Id. at 208-209.

8 *Rollo* (G.R. No. 180148), p. 17.

9 Id. at 87.

10 Id. at 18.

11 *Rollo* (G.R. No. 180319, Vol. III), p. 1751.

complaints were consolidated before the labor arbiter. Later amendments to the complaint included as respondents SLC, SLP, FAPI and Cruz, and Emilinda D. Macatlang, *et al.,* is captioned as the complainant, represented in the suit by Emilinda D. Macatlang. The complaints alleged that FAPI is engaged in the manufacture and exportation of the same articles manufactured by Aris; that there was a mass transfer of Aris' equipment and employees to FAPI's plant in Muntinlupa, Rizal; that contractors of Aris continued as contractors of FAPI; and that the export quota of Aris was transferred to FAPI.[12] Essentially, the complainants insisted that FAPI was organized by the management of Aris to continue the same business of Aris, thereby intending to defeat their right to security of tenure. They likewise impleaded in their subsequent pleadings that SLC and SLP are the major stockholders of FAPI, and Cruz as Vice-President and Director of Aris.

Aris countered that it had complied with all the legal requirements for a valid closure of business operations; that it is not, in any way, connected with FAPI, which is a separate and distinct corporation; that the contracts of Aris with its contractors were already terminated; and that there is no truth to the claim that its export quota with Garments and Textile Export Board was transferred to FAPI because the export quota is non-transferable.[13]

On 30 October 2004, the Labor Arbiter rendered judgment finding the dismissal of 5,984 complainants as illegal and awarding them separation pay and other monetary benefits amounting to ₱3,453,664,710.86.[14] The dispositive portion of the decision read:

> WHEREFORE, premises all considered, judgment is hereby rendered dismissing the complaint for unfair labor practice (ULP); declaring that complainants were illegally dismissed; ordering respondents to jointly and severally pay them separation pay at one (1) month for every year of service; backwages from the time their compensation was withheld until the promulgation of this Decision[,] ₱5,000.00 moral damages and ₱5,000.00 exemplary damages for each of them, and eight percent (8%) attorney's fee of the total monetary award, less the separation pay they received upon closure of API.
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> All other claims are hereby DISMISSED.
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> Attached and marked as Annexes "A" to "A-117" and shall form part of this decision are the lists of complainants and their respective monetary awards.[15]

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12 Id. at 1752.
13 Id.
14 Id. at 359.
15 Id. at 241.

Upon receipt of a copy of the aforesaid decision, the Corporations filed their Notice of Appeal with Motion to Reduce Appeal Bond and To Admit Reduced Amount with the National Labor Relations Commission (NLRC). They asked the NLRC to reduce the appeal bond to ₱1 Million each on the grounds that it is impossible for any insurance company to cover such huge amount and that, in requiring them to post in full the appeal bond would be tantamount to denying them their right to appeal.[16] Aris claimed that it was already dissolved and undergoing liquidation. SLC added that it is not the employer of Emilinda D. Macatlang, *et al.*, and that the latter had already received from Aris their separation pay and other benefits amounting to ₱419,057,348.24, which covers practically more than 10% of the monetary award.[17] FAPI, for its part, claimed that its total assets would not be enough to answer for even a small portion of the award. To compel it to post a bond might result in complete stoppage of operations. FAPI also cited the possibility that the assailed decision once reviewed will be reversed and set aside.[18] The Corporations posted a total of ₱4.5 Million.

Emilinda D. Macatlang, *et al*., opposed the motion by asserting that failure to comply with the bond requirement is a jurisdictional defect since an appeal may only be perfected upon posting of a cash bond equivalent to the monetary award provided by Article 223 of the Labor Code.[19]

In light of the impossibility for any surety company to cover the appeal bond and the huge economic losses which the companies and their employees might suffer if the ₱3.45 Billion bond is sustained, the NLRC granted the reduction of the appeal bond. The NLRC issued an Order dated 31 March 2006[20] directing the Corporations to post an additional ₱4.5 Million bond, bringing the total posted bond to ₱9 Million. The dispositive portion of the Order provides:

> WHEREFORE, premises considered, respondents are hereby ordered to post bond, either in cash, surety or property, in the additional amount of FOUR MILLION FIVE HUNDRED THOUSAND PESOS (₱4,500,000.00) within an INEXTENDIBLE period of FIFTEEN (15) calendar days from receipt hereof. To the said extent, the Motion for Reduction is granted.
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> Failure to render strict compliance with the Order entered herein shall render the dismissal of the appeal and the decision sought for review, as final and executory.[21]

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16 Id. at 360-373.
17 *Rollo* (G.R. No. 180147), p. 22.
18 *Rollo* (G.R. No. 180319, Vol. I), pp. 365-369.
19 *Rollo* (G.R. No. 180150), p. 431.
20 *Rollo* (G.R. No. 180319, Vol. I), pp. 126-131.
21 Id. at 130.

Emilinda D. Macatlang, *et al.*, filed a petition for *certiorari* before the Court of Appeals, docketed as CA-G.R. SP No. 96363. They charged the NLRC with grave abuse of discretion in giving due course to the appeal of petitioners despite the gross insufficiency of the cash bond. They declared that the appeal bond must be equivalent to the amount of the award.[22] Another petition, this time by Pacita Abelardo, *et al.*, was also filed before the Court of Appeals and docketed as CA-G.R. SP No. 95919.

The Corporations filed a Motion to Dismiss the petition in CA-G.R. SP No. 95919 on the grounds of forum-shopping, absence of authorization from the employees for Emilinda D. Macatlang to file said petition, and for failure to state the material dates.[23]

While the case was pending, the NLRC issued a Resolution on 19 December 2006 setting aside the Decision of the labor arbiter and remanding the case to the "forum of origin for further proceedings."[24]

In view of this related development, the Corporations filed their respective Manifestation and Motion dated 30 January 2007 praying for the dismissal of the petition for *certiorari* for being moot and academic.

On 26 March 2007, the Court of Appeals proceeded to reverse and set aside the 31 March 2006 NLRC Resolution and deemed it reasonable under the circumstances of the case to order the posting of an additional appeal bond of ₱1 Billion. The dispositive portion of the decision decreed:

> WHEREFORE, premises considered, the March 31, 2006 Decision of the 2nd Division of the National Labor Relations Commission, in NLRC NCR CA No. 046685-05, which reduced the required Php 3.453 BILLION Pesos appeal bond to a paltry 9 Million Pesos, is hereby REVERSED and SET ASIDE and a new one issued, to ensure availability of hard cash or reliable surety, on which victorious laborers could rely, DIRECTING private respondents to POST additional appeal bond in the amount of Php 1 BILLION Pesos, in cash or surety, within thirty (30) days from finality of this judgment, as pre-requisite to perfecting appeal.[25]

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22 *Rollo* (G.R. No. 180147), pp. 577-578.
23 *Rollo* (G.R. No. 180150), pp. 26-27.
24 *Rollo* (G.R. No. 180147), p. 789.
25 *Rollo* (G.R. No. 180319, Vol. I), p. 27.

All parties filed their Motion for Reconsideration but were later denied by the Court of Appeals in a Resolution[26] dated 22 October 2007.

II.

Six (6) petitions for review on *certiorari* of the Decision of the Court of Appeals were filed before this Court. They were docketed and entitled as follows: 1) G.R. No. 180147: *Sara Lee Philippines, Inc. v. Emilinda D. Macatlang, et al.*; 2) G.R. No. 180148: *Aris Philippines, Inc. v. Emilinda D. Macatlang, et al.*; 3) G.R. No. 180149: *Sara Lee Corporation v. Emilinda D. Macatlang, et al.*; 4) G.R. No. 180150: *Cesar C. Cruz v. Emilinda D. Macatlang, et al.*; 5) G.R. No. 180319: *Fashion Accessories Phils., Inc. v. Emilinda D. Macatlang, et al.*; and 6) G.R. No. 180685: *Emilinda D. Macatlang, et al. v. NLRC*. In Resolutions dated 28 January 2008 and 18 February 2008, this Court resolved to consolidate these six (6) cases.[27]

The Corporations argue that the Court of Appeals committed serious error in not dismissing Emilinda D. Macatlang, *et al.*'s petition due to the filing of two (2) separate petitions for *certiorari*, namely: *Emilinda Macatlang, et al. v. Aris Philippines* in CA-G.R. SP No. 96363 (Macatlang petition) and *Pacita S. Abelardo v. NLRC, Aris Philippines, et al.* in CA-G.R. SP No. 95919 (Abelardo petition). These two petitions, the Corporations aver, raise identical causes of action, subject matters and issues, which are clearly violative of the rule against forum-shopping. Moreover, the petitioners in the Abelardo petition[28] consist of 411 employees,[29] all of whom are also petitioners in the Macatlang petition. The Corporations question the authority of Emilinda D. Macatlang to file and sign the verification and certification of non-forum shopping because *Resolusyon Bilang* 09-01-1998 (*Resolusyon*) dated 5 September 1998 did not make any specific reference or authority that Emilinda D. Macatlang can sign the verification and certification against forum shopping on behalf of the other complainants. The Corporations claim that the Macatlang's petition failed to state the material dates, such as when the NLRC order and resolution were received and when the motion for reconsideration thereof was filed.[30]

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26 Id. at 29-32.
27 *Rollo* (G.R. No. 180149), pp. 908-909.
28 The petition was dismissed on technical grounds by the Court of Appeals on 17 November 2006. Id. at 902.
29 Id. 35-38.
30 Id. at 34-45.

The Corporations impute another error on the Court of Appeals when it did not dismiss the petition for being moot and academic despite the fact that on 19 December 2006, the NLRC had already set aside the decision of the Labor Arbiter. They defend the validity of the NLRC resolution in the absence of a temporary restraining order or writ of preliminary injunction issued by the Court of Appeals.[31]

The Corporations assail the Court of Appeals in directing the posting of an additional appeal bond of ₱1 Billion. They contend that the Court of Appeals overlooked the fact that Macatlang, *et al*., had already received their separation pay of ₱419 Million and ₱15 Million Benevolent Fund which went to the union.[32] The Court of Appeals also failed to exclude the amount awarded to complainants as damages which under the NLRC Rules have to be excluded. The Corporations seek a liberal interpretation to the requirement of posting of appeal bond in that the NLRC has the power and authority to set a reduced amount of appeal bond.[33]

SLPI also adds that their right to due process was allegedly violated for the following reasons: first, it was never impleaded in the complaints; second, the requirements of service of summons by publication were not complied with as admitted by the labor arbiter himself thereby making it defective; and third, there was no showing that there was prior resort to service of summons to the duly authorized officer of the company before summons by publication was made to SLPI.[34]

FAPI slams the Court of Appeals for touching on the merits of the case when the only issue brought to its attention is the NLRC's ruling on the appeal bond. FAPI argues that the Court of Appeals has no basis in stating that: (1) there were 7,637 employees of Aris who were already laid off and became complainants when there are in fact only 5,984 employees of Aris involved in the illegal dismissal case; (2) that the ₱419 Million was not proven to have been paid to the complainants when as a matter of fact, records of the NLRC revealed that the amount was actually paid by Aris to its employees; and (3) that a dummy subsidiary referring to FAPI was formed when records disclose that the ownership, incorporators, officers, capitalization, place of business, and product manufactured by FAPI and Aris are different.[35]

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31 Id. at 50.
32 Id. at 51.
33 Id. at 58.
34 Id. at 79.
35 *Rollo* (G.R. No. 180319, Vol. I), pp. 64-69.

On the other hand, Emilinda D. Macatlang, *et al.*, in their petition for review on *certiorari* assert that the appeal of the Corporations had not been perfected in accordance with Article 223 of the Labor Code when they failed to post the amount equivalent to the monetary award in the judgment appealed from amounting to ₱3.45 Billion. Emilinda D. Macatlang, *et al.*, submit that the ₱1 Billion bond is not equivalent to the monetary award of ₱3.45 Billion. More importantly, Emilinda D. Macatlang, *et al.*, accused the Court of Appeals of extending the period of appeal by prescribing an additional amount to be paid within a reasonable period of time, which period it likewise determined, in contravention of Article 223 of the Labor Code. Emilinda D. Macatlang, *et al.*, expound that the filing of a bond outside the period of appeal, even with the filing of a motion to reduce bond, would not stop the running of the period of appeal. Emilinda D. Macatlang, *et al.*, opine that the Court of Appeals has not been conferred the power to legislate hence it should have strictly followed Article 223 of the Labor Code, as the same was clear.[36]

In an Urgent Manifestation and Motion, the Corporations informed this Court of a Resolution dated 30 March 2009 by the Third Division of this Court entitled, *"Gabriel Fulido, et al. v. Aris Philippines, Inc."* docketed as G.R. No. 185948 (*Fulido* case) denying the petition for review filed by complainants in that case. The Corporations intimate that the petitioners in the *Fulido* case are also former employees of Aris whose employments were terminated as a result of Aris' permanent closure. Petitioners submit that Emilinda D. Macatlang, *et al*., and petitioners in the *Fulido* case filed illegal dismissal cases before the NLRC seeking identical reliefs. Considering the identity in essential facts and basic issues involved, petitioners argue that there is compelling reason to adopt and incorporate by reference the conclusion reached in the *Fulido* case.[37]

III.

The issues raised in these consolidated cases can be summarized as follows:

1. Whether the filing of two (2) petitions for *certiorari*, namely: the Macatlang petition and the Abelardo petition constitutes forum shopping.

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36 *Rollo* (G.R. No. 180685), pp. 10-17.

37 *Rollo* (G.R. No. 180148), pp. 1191-1201.

2. Whether Emilinda D. Macatlang was duly authorized to sign the verification and certificate of non-forum shopping attached to the Macatlang petition.

3. Whether the petition should be dismissed for failure to state the material dates.

4. Whether the service of summons by publication on SLC is defective.

5. Whether the subsequent NLRC ruling on the merits during the pendency of the petition questioning an interlocutory order renders the instant petition moot and academic.

6. Whether the appeal bond may be reduced.

Before we proceed to the gist of this controversy, we shall resolve the first 3 procedural issues first.

IV.

The Corporations claim that the group of Macatlang committed forum shopping by filing two petitions before the Court of Appeals.

Forum shopping is the act of a litigant who repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and on the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other court, to increase his chances of obtaining a favorable decision if not in one court, then in another.[38]

What is pivotal in determining whether forum shopping exists or not is the vexation caused the courts and parties-litigants by a party who asks different courts and/or administrative agencies to rule on the same or related cases and/or grant the same or substantially the same reliefs, in the process

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[38] *SM Systems Corporation v. Camerino,* G.R. No. 178591, 26 July 2010, 625 SCRA 482, 489 citing *Atty. Briones v. Henson-Cruz,* 585 Phil. 63, 80 (2008).

creating the possibility of conflicting decisions being rendered by the different courts and/or administrative agencies upon the same issues.[39]

Forum shopping exists when the elements of *litis pendentia* are present, and when a final judgment in one case will amount to *res judicata* in the other. For *litis pendentia* to be a ground for the dismissal of an action, there must be: (a) identity of the parties or at least such as to represent the same interest in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same acts; and (c) the identity in the two cases should be such that the judgment which may be rendered in one would, regardless of which party is successful, amount to *res judicata* in the other.[40]

The Macatlang petition was filed on 8 September 2006 while the Abelardo petition was filed 10 days later, or on 18 September 2006. Indeed, these two petitions assailed the same order and resolution of the NLRC in NLRC CA No. 046685-05, entitled *Emilinda Macatlang, et al. v. Aris Philippines, Inc., et al.*, and sought for the dismissal of the Corporations' appeal for non-perfection because of failure to post the required appeal bond. A judgment in either case would have, if principles are correctly applied, amounted to *res judicata* in the other.

At first glance, it appears that there is also identity of parties in both petitions which is indicative of forum-shopping. The Macatlang petition consists of 5,984 dismissed employees of Aris while the Abelardo petition has 411 dismissed employees, all of which were already included as petitioners in the Macatlang petition. With respect to these 411 petitioners, they could be declared guilty of forum shopping when they filed the Abelardo petition despite the pendency of the Macatlang petition. As a matter of fact, the Abelardo petition was dismissed by the Court of Appeals in a Resolution dated 17 November 2006 on the ground of a defective certification on non-forum shopping, among others.[41] The Abelardo petition appears to be defective as the petition itself was replete with procedural

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39 *Yu v. Lim*, G.R. No. 182291, 22 September 2010, 631 SCRA 172, 184 citing *Lim v. Judge Vianzon*, 529 Phil. 472, 484-485 (2006) citing further *Rudecon Management Corporation v. Singson*, 494 Phil. 581, 599-600 (2005).

40 *In Re: Reconstitution of Transfer Certificates of Title Nos. 303168 and 303169 and Issuance of Owner's Duplicate Certificates of Title in Lieu of those Lost, Rolando Edward G. Lim*, G.R. No. 156797, 6 July 2010, 624 SCRA 81, 88-89 citing *Cooperative Development Authority v. Dolefil Agrarian Reform Beneficiaries Cooperative, Inc*., 432 Phil. 290, 317 (2002); *Sps. Cruz v. Sps. Caraos*, 550 Phil. 98, 110 (2007); *Republic v. Carmel Development, Inc*, 427 Phil. 723, 739 (2002); *R & M General Merchandise, Inc. v. Court of Appeals*, 419 Phil. 131, 145 (2001); *Prubankers Association v. Prudential Bank and Trust Company*, 361 Phil. 744, 755 (1999); *Cebu International Finance Corp. v. Court of Appeals*, 374 Phil. 844, 857 (1999).

41 *Rollo* (G.R. No. 180149), p. 902.

infirmities prompting the Court of Appeals to dismiss it outright. Instead of curing the defects in their petition, petitioners in Abelardo revealed that pertinent documents which should have been attached with their petition were actually submitted before the Sixteenth Division of the Court of Appeals where the Macatlang petition was pending. Evidently, petitioners in Abelardo have foreknowledge of an existing petition but nevertheless proceeded to file another petition and omitting to mention it in their certification on non-forum shopping, either intentionally or not. Clearly, the petitioners in the Abelardo petition committed forum shopping.

Now, should the act of these 411 employees prejudice the rights of the 5,573 other complainants in the Macatlang petition? The answer is no. Forum shopping happens when there is identity of the parties or at least such as to represent the same interest in both actions. We do not agree that the 411 petitioners of the Abelardo petition are representative of the interest of all petitioners in Macatlang petition. First, the number is barely sufficient to comprise the majority of petitioners in Macatlang petition. Second, it would be the height of injustice to dismiss the Macatlang petition which evidently enjoys the support of an overwhelming majority due to the mistake committed by petitioners in the Abelardo petition. In the absence of substantial similarity between the parties in Macatlang and Abelardo petitions, we find that the petitioners in Macatlang petition did not commit forum shopping. This view was implicitly shared by the Thirteenth Division of the Court of Appeals when it did not bother to address the issue of forum shopping raised by petitioners therein precisely because at the time it rendered the assailed decision, the Abelardo petition had already been summarily dismissed.

V.

Next, the Corporations complain that Macatlang was not duly authorized to sign the verification and certification of non-forum shopping which accompanied the main petition before the Court of Appeals. They anchored their argument on *Resolusyon*, which reads in part:

> 1. *Aming binigyan ng karapatan sina* ERNESTO R. ARELLANO AT/*O* VILLAMOR MOSTRALES, *aming mga abogado/*legal advisers *ng* Arellano & Associates *at si* EMILINDA D. MACATLANG, *aming* head complainant, *bilang aming* ATTORNEYS-IN-FACT *para katawanin at kanilang gampanan ang mga sumusunod na Gawain alinsunod sa aming kagustuhan:*

a. *Na, kami ay katawanin sa kaso o mga kaso laban sa mga nabanggit na Kompanya:* ARIS, FAPI *AT* SARA LEE CORP./SARA LEE PHILS., INC. *at sa mga opisyales ng mga nabanggit; pirmahan ang anumang demanda o "complaint" at lahat na mga kaukulang papeles tulad ng* Position Paper, Reply, Rejoinder, Memorandum *at iba pang papeles na may kinalaman o patungkol sa kasong ito simula sa* NLRC, Court of Appeals, *hanggang sa Korte Suprema;*

b. *Na, aming malayang iniaatang sa kanila ang karapatan upang makipagkasundo sa mga nademanda sa pamamagitan ng isang* "Compromise Agreement" *o Kasunduan, gayon din ang karapatang tanggapin ang kabuuang kabayaran sa aregluhan sa kaso na ayon sa kanilang pagsusuri ay mabuti at makatarungan para sa amin, kaakibat ng aming mga pirmang tanda ng pagsang-ayon ito bilang mayoria na nagdemanda o tanggapin ang kabuuang bayad sa pagtatapos ng kaso, bilang aming kinatawan* at ATTORNEYS-IN-FACT;

c. *Na, sa kanilang puspusan at matapat na paghawak sa naturang kaso, aming ibibigay ang sampung porsiyento* (10%) *ng aming* "total claims" *bilang attorney's fees ng aming humawak na abogado/*legal adviser*: sina* Atty. Ernesto R. Arellano and/or Villamor A. Mostrales *at gayon din sa karagdagang panagot sa kanilang ginastos, gagastusin sa pagtatanggol ng kaso bilang* miscellaneous expenses *sa kanilang ma[a]yos na pagsulong at pagtangan ng aming pangkalahatang interes sa naturang kaso.*[42]

From the foregoing document, it can easily be gleaned that Macatlang was assigned by the complainants as their attorney-in-fact to perform the following acts: 1) to represent them in the case/cases filed against Aris, FAPI, SLC, and SLPI; sign any complaint, pleadings, or any other documents pertinent or related to the instant case brought before the NLRC, Court of Appeals, and Supreme Court; 2) to enter into any compromise agreement or settlement; and 3) to receive the full payment as a consequence of any settlement. The first act necessarily encompasses the authority to sign **any document related to NLRC NCR No. 00-04-03677-98**. The petition for review on *certiorari* is one of these documents. Supreme Court Circular Nos. 28-91 and 04-94 require a Certification of Non-Forum Shopping in any initiatory pleading filed before the Supreme Court and the Court of Appeals while Section 1, Rule 45 of the Rules of Civil Procedure requires the petition for review on *certiorari* to be verified, thereby making the verification and certification of non-forum shopping essential elements of a petition for review on *certiorari*, which Macatlang herself was authorized under the *Resolusyon* to sign.

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42 Id. at 622.

VI.

The Corporations argue that the case before the Court of Appeals should have been dismissed for failure of Macatlang to state the material dates in the petition. Section 3, Rule 46 of the Rules of Court mandates that in a petition for *certiorari* before the Court of Appeals, the material dates showing when notice of the judgment or final order or resolution assailed was received, when the motion for reconsideration was filed, and when notice of the denial thereof was received, must be indicated. Under the same rule, failure to state the material dates shall be a ground for dismissal of the petition. The *rationale* for the requirement is to enable the appellate court to determine whether the petition was filed within the period fixed in the rules.[43] However, the strict requirements of the law may be dispensed with in the interest of justice. It may not be amiss to point out this Court's ruling in the case of *Acaylar, Jr. v. Harayo*,[44] and we quote:

> We also agree with the petitioner that failure to state the material dates is not fatal to his cause of action, provided the date of his receipt, *i.e.*, 9 May 2006, of the RTC Resolution dated 18 April 2006 denying his Motion for Reconsideration is duly alleged in his Petition. In the recent case of *Great Southern Maritime Services Corporation v. Acuña*, we held that "the failure to comply with the rule on a statement of material dates in the petition may be excused since the dates are evident from the records." The more material date for purposes of appeal to the Court of Appeals is the date of receipt of the trial court's order denying the motion for reconsideration. The other material dates may be gleaned from the records of the case if reasonably evident.[45]

In the instant case, the Corporations alleged in their petition before the Court of Appeals that when they received the Resolution of the NLRC on 6 July 2006, it can be determined whether the appeal to the Court of Appeals was filed within the 60-day reglementary period. And as a matter of fact, the appeal was filed on 8 September 2006, and well within the 60-day period.

VII.

Having disposed the procedural issues, we now tackle the Corporations' arguments, in the main, calling for a reduction of the appeal bond.

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43 *Technological Institute of the Philippines Teachers and Employees Organization (TIPTEO) v. Court of Appeals*, 608 Phil. 632 (2009).

44 582 Phil. 600, 612 (2008) citing *Great Southern Maritime Services Corp. v. Acuña*, 492 Phil. 518, 525-527 (2005); *Security Bank Corporation v. Indiana Aerospace University*, 500 Phil. 51, 57-60 (2005).

45 *Acaylar, Jr. v. Harayo*, id.

Well-settled is the doctrine that appeal is not a constitutional right, but a mere statutory privilege. Hence, parties who seek to avail themselves of it must comply with the statutes or rules allowing it.[46] The primary rule governing appeal from the ruling of the labor arbiter is Article 223 of the Labor Code which provides:

> Art. 223. Appeal. — Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. Such appeal may be entertained only on any of the following grounds:
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> a. If there is *prima facie* evidence of abuse of discretion on the part of the Labor Arbiter;
> b. If the decision, order or award was secured through fraud or coercion, including graft and corruption;
> c. If made purely on questions of law; and
> d. If serious errors in the findings of facts are raised which would cause grave or irreparable damage or injury to the appellant.
>
> **In case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed from**. (Emphasis supplied).

Article 223, under Presidential Decree No. 442, was amended by Republic Act No. 6715 to include the provision on the posting of a cash or surety bond as a precondition to the perfection of appeal.

The requisites for perfection of appeal as embodied in Article 223, as amended, are: 1) payment of appeal fees; 2) filing of the memorandum of appeal; and 3) payment of the required cash or surety bond.[47] These requisites must be satisfied within 10 days from receipt of the decision or order appealed from.

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46 *Calipay v. National Labor Relations Commission*, G.R. No. 166411, 3 August 2010, 626 SCRA 409, 416 citing *McBurnie v. Ganzon*, G.R. Nos. 178034, 178117, 186984-85, 18 September 2009, 600 SCRA 658, 672; *Land Bank of the Philippines v. Ascot Holdings and Equities, Inc.*, 562 Phil. 974, 983-984 (2007); *Philippine Long Distance Telephone Company v. Raut*, 613 Phil. 427 (2009) citing *Accessories Specialist, Inc. v. Alabanza*, 581 Phil. 517, 530 (2008) citing further *Cuevas v. Bais Steel Corporation*, 439 Phil. 793, 805 (2002).

47 *Ramirez v. Court of Appeals*, G.R. No. 182626, 4 December 2009, 607 SCRA 752, 761 citing *Ciudad Fernandina Food Corporation Employees Union-Associated Labor Unions v. Court of Appeals*, 528 Phil. 415, 430 (2006).

In *YBL v. NLRC,*[48] the Court was more liberal in construing Article 223. The NLRC dismissed the appeal for failure to post the bond. The Court favored the appellant partly because the appeal was made just after six (6) days from the effectivity of the Interim Rules of Republic Act No. 6715. The Court observed that both parties did not know about the new rule yet.

It is presumed that an appeal bond is only necessary in cases where the labor arbiter's decision or order contains a monetary award. Conversely, when the labor arbiter does not state the judgment award, posting of bond may be excused.

In *YBL*, the exact total amount due to the private respondents as separation pay was not stated which would have been the basis of the bond that is required to be filed by petitioners under the said law.

From an award of backwages and overtime pay by the labor arbiter in *Rada v. NLRC,*[49] petitioner therein failed to post the supersedeas bond. Nevertheless, the Court gave due course to the appeal for "the broader interests of justice and the desired objective of resolving controversies on the merits." The amount of the supersedeas bond could not be determined and it was only in the NLRC order that the amount was specified and which bond, after extension granted by the NLRC, was timely filed by petitioner.

In the same vein, the Court in *Blancaflor v. NLRC,*[50] excused the failure of appellant to post a bond due to the failure of the Labor Arbiter to state the exact amount of back wages and separation pay due.

Citing *Taberrah v. NLRC*[51] and *National Federation of Labor Union v. Hon. Ladrido III,*[52] the Court in *Orozco v. The Fifth Division of the Court of Appeals*[53] postulated that "respondents cannot be expected to post such appeal bond equivalent to the amount of the monetary award when the amount thereof was not included in the decision of the labor arbiter." The computation of the amount awarded to petitioner was not stated clearly in the decision of the labor arbiter, hence, respondents had no basis in determining the amount of the bond to be posted.

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48 268 Phil. 169 (1990).
49 G.R. No. 96078, 9 January 1992, 205 SCRA 69, 205 SCRA 69, 76.
50 G.R. No. 101013, 2 February 1993, 218 SCRA 366.
51 342 Phil. 394 (1997).
52 274 Phil. 244 (1991).
53 497 Phil. 227, 236 (2005).

Furthermore, when the judgment award is based on a patently erroneous computation, the appeal bond equivalent to the amount of the monetary award is not required to be posted.

Erectors, Inc. v. NLRC[54] is a good example on this point. The NLRC's order to post a bond of ₱1,576,224.00 was nullified because the bond was erroneously computed on the basis of the salary which the employee was no longer receiving at the time of his separation.

Also, since the computation of the award in *Star Angel Handicraft v. NLRC*[55] was based on erroneous wage and that a big portion of the award had already prescribed, the non-posting of appeal bond was excused.

In *Dr. Postigo v. Phil. Tuberculosis Society, Inc.*,[56] respondent deferred the posting of the surety bond in view of the alleged erroneous computation by the labor arbiter of the monetary award. While the labor arbiter awarded ₱5,480,484.25 as retirement benefits, only ₱5,072,277.73, according to the respondent's computation, was due and owing to the petitioners.

In sum, the NLRC may dispense of the posting of the bond when the judgment award is: (1) not stated or (2) based on a patently erroneous computation. Sans these two (2) instances, the appellant is generally required to post a bond to perfect his appeal.

The Court adhered to a strict application of Article 223 when appellants do not post an appeal bond at all. By explicit provision of law, an appeal is perfected only upon the posting of a cash or surety bond. The posting of the appeal bond within the period provided by law is not merely mandatory but jurisdictional.[57] The reason behind the imposition of this requirement is enunciated in *Viron Garments Mfg. Co., Inc. v. NLRC,*[58] thus:

> The requirement that the employer post a cash or surety bond to perfect its/his appeal is apparently intended to assure the workers that if they prevail in the case, they will receive the money judgment in their favor upon the dismissal of the employer's appeal. It was intended to

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54 G.R. No. 93690, 10 October 1991, 202 SCRA 597.
55 G.R. No. 108914, 20 September 1994, 236 SCRA 580.
56 515 Phil. 601 (2006).
57 *Banahaw Broadcasting Corp. v. Pacana III*, G.R. No. 171673, 30 May 2011, 649 SCRA 196, 210.
58 G.R. No. 97357, 18 March 1992, 207 SCRA 339.

> discourage employers from using an appeal to delay, or even evade, their obligation to satisfy their employees' just and lawful claims.[59]

Thus, when petitioners, in the cases of *Ong v. Court of Appeals*,[60] *Rural Bank of Coron (Palawan), Inc. v. Cortes*,[61] *Sy v. ALC*,[62] *Ciudad Fernandina Food Corporation Employees Union-Association Labor Unions v. Court of Appeals*,[63] and *Stolt-Nielsen Maritime Services, Inc. v. NLRC*,[64] did not post a full or partial appeal bond, it was held that no appeal was perfected. A longer look on past rulings would show that:

In *Nationwide Security and Allied Services, Inc. v. NLRC*,[65] it was found that petitioners had funds from its other businesses to post the required bond. The Court did not find as acceptable petitioner's excuse, that "[using] funds from sources other than that earned from [its company is not] a sound business judgment" to exempt it from posting an appeal bond.

Petitioner's failure in *Mers Shoes Mfg, Inc. v. NLRC*,[66] to post the required bond within the reglementary period after it has been ordered reduced, justified the dismissal of its appeal.

The labor arbiter's decision in *Santos v. Velarde*[67] stated the exact award of backwages to be paid by petitioner, thus the Court affirmed the dismissal of the appeal by the non-payment of the appeal bond within the 10-day period provided by law.

Even if petitioner in *Heritage Hotel Manila v. NLRC*[68] questioned as basis of the appeal bond the computation of the monetary award, the Court did not excuse it from posting a bond in a reasonable amount or what it believed to be the correct amount.

In *Banahaw Broadcasting Corporation v. Pacana III*,[69] the NLRC issued an order denying petitioner's motion for recomputation of the monetary award and ordered it to post the required bond within 10 days.

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59 Id. at 342.
60 482 Phil. 170 (2004).
61 539 Phil. 498 (2006).
62 589 Phil. 354 (2008).
63 Supra note 42.
64 513 Phil. 642 (2005).
65 341 Phil. 393, 403 (1997).
66 350 Phil. 294 (1998).
67 450 Phil. 381 (2003).
68 614 Phil. 320 (2009).
69 Supra note 52.

When BBC further demonstrated its unwillingness by completely ignoring this warning and by filing a Motion for Reconsideration on an entirely new ground, we held that the NLRC cannot be said to have committed grave abuse of discretion by making good its warning to dismiss the appeal.[70]

Upon the other hand, the Court did relax the rule respecting the bond requirement to perfect appeal in cases where: (1) there was substantial compliance with the Rules, (2) surrounding facts and circumstances constitute meritorious grounds to reduce the bond, (3) a liberal interpretation of the requirement of an appeal bond would serve the desired objective of resolving controversies on the merits, or (4) the appellants, at the very least, exhibited their willingness and/or good faith by posting a partial bond during the reglementary period.[71]

In *Lopez v. Quezon City Sports Club Inc.*,[72] the posting of the amount of ₱4,000,000.00 simultaneously with the filing of the motion to reduce the bond to that amount, as well as the filing of the memorandum of appeal, all within the reglementary period, altogether constitute substantial compliance with the Rules. In *Intertranz Container Lines, Inc. v. Bautista,*[73] this Court has relaxed the appeal bond requirement when it was clear from the records that petitioners never intended to evade the posting of an appeal bond. In *Semblante v. Court of Appeals,*[74] the Court stated that the rule on the posting of an appeal bond cannot defeat the substantive rights of respondents to be free from an unwarranted burden of answering for an illegal dismissal for which they were never responsible. It was found that respondents, not being petitioners' employees, could never have been dismissed legally or illegally. In the recent case of *Garcia v. KJ Commercial,*[75] respondent showed willingness to post a partial bond when it posted a ₱50,000.00 cash bond upon filing of a motion to reduce bond. In addition, when respondent's motion for reconsideration was denied, it posted the full surety bond.

The old NLRC Rules of Procedure, which took effect in 5 November 1993,[76] provides:

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70 Id.

71 *Nicol v. Footjoy Industrial Corp.*, 555 Phil. 275, 292 (2007).

72 596 Phil. 204 (2009).

73 G.R. No. 187693, 13 July 2010, 625 SCRA 75.

74 G.R. No. 196426, 15 August 2011, 655 SCRA 444.

75 G.R. No. 196830, 29 February 2012, 667 SCRA 396.

76 As amended by Resolution No. 01-02, series of 2002. It amended certain provisions of the New Rules of Procedure of the NLRC which was promulgated on February 12, 2002 and took effect on March 18, 2002.

> SECTION 6. Bond. — In case the decision of a Labor Arbiter POEA Administrator and Regional Director or his duly authorized hearing officer involves a monetary award, an appeal by the employer shall be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission or the Supreme Court in an amount equivalent to the monetary award, exclusive of moral and exemplary damages and attorney's fees.
>
> The employer as well as counsel shall submit a joint declaration under oath attesting that the surety bond posted is genuine and that it shall be in effect until final disposition of the case.
>
> **The Commission may, in meritorious cases and upon Motion of the Appellant, reduce the amount of the bond.** (As amended by Nov. 5, 1993) (Emphasis Supplied).

Thus, appellants are given the option to file a motion to reduce the amount of bond only in meritorious cases. In the NLRC New Rules of Procedure promulgated in 2002, another qualification to the reduction of an appeal bond was added in Section 6 thereof:

> No motion to reduce bond shall be entertained except on **meritorious grounds, and only upon the posting of a bond in a reasonable amount** in relation to the monetary award. (Emphasis Supplied).

Said Rules significantly provide that:

> The filing of the motion to reduce bond without compliance with the requisites in the preceding paragraphs, shall not stop the running of the period to perfect an appeal.

Clearly therefore, the Rules only allow the filing of a motion to reduce bond on two (2) conditions: (1) that there is meritorious ground and (2) a bond in a reasonable amount is posted. Compliance with the two conditions stops the running of the period to perfect an appeal provided that they are complied within the 10-day reglementary period.

In *Ramirez v. Court of Appeals*,[77] the Court did not find any merit to reduce the bond. Although Ramirez posted an appeal bond, the same was insufficient, as it was not equivalent to the monetary award of the Labor Arbiter. Moreover, when Ramirez sought a reduction of the bond, he merely

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77 G.R. No. 182626, 4 December 2009, 607 SCRA 752.

said that the bond was excessive and baseless without amplifying why he considered it as such.

The grounds to be cited in the motion to reduce must be valid and acceptable. For instance, in *Pasig Cylinder, Mfg., Corp. v. Rollo,*[78] we found as acceptable reason for reducing the appeal bond the downscaling of their operations considered together with the amount of the monetary award appealed. In *University Plans Incorporated v. Solano,*[79] the fact of receivership was considered as a meritorious ground in reducing the appeal bond.

Since the intention is merely to give the NLRC an idea of the justification for the reduced bond, the evidence for the purpose would necessarily be less than the evidence required for a ruling on the merits.[80] As a matter of fact, in *Star Angel*, the NLRC was ordered to make a preliminary determination on the merits for granting a reduction of the appeal bond. In *University Plans*, the Court took into consideration the fact that petitioner was under receivership and it was possible that petitioner has no liquid asset and it could not raise the amount of more than ₱3Million within a period of 10-days from receipt of the Labor Arbiter's judgment. Therefore, the Court ordered a remand of the case to the NLRC for the conduct of preliminary determination of the merit or lack of merit of petitioner's motion to reduce bond. The Court adopted the ruling in *Nicol v. Footjoy Industrial Corp.*, where the case was also remanded to the NLRC to determine the merits of the motion to reduce in view of our finding that the NLRC in that case gravely abused its discretion when it dismissed Footjoy's appeal, without even receiving evidence from which it could have determined the merit or lack of it of the motion to reduce the appeal bond.

In the recent case of *McBurnie v. Ganzon,*[81] we held that merit may "pertain to an appellant's lack of financial capability to pay the full amount of the bond, the merits of the main appeal such as when there is a valid claim that there was no illegal dismissal to justify the award, the absence of an employer-employee relationship, prescription of claims, and other similarly valid issues that are raised in the appeal. For the purpose of determining a 'meritorious ground,' the NLRC is not precluded from receiving evidence, or from making a preliminary determination of the merits of the appellant's contentions."[82]

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78 G.R. No. 173631, 8 September 2010, 630 SCRA 320.
79 G.R. No. 170416, 22 June 2011, 652 SCRA 492.
80 Id. at 506.
81 G.R. Nos. 178034 & 178117, G.R. Nos. 186984-85, 17 October 2013.
82 Id.

In order to toll the running of the period to appeal once the motion for reduction is filed, *McBurnie* has set a parameter on what amount is reasonable for such purpose:

> To ensure that the provisions of Section 6, Rule VI of the NLRC Rules of Procedure that give parties the chance to seek a reduction of the appeal bond are effectively carried out, without however defeating the benefits of the bond requirement in favor of a winning litigant, all motions to reduce bond that are to be filed with the NLRC shall be accompanied by the posting of a cash or surety bond equivalent to **10% of the monetary award that is subject of the appeal, which shall provisionally be deemed the reasonable amount of the bond in the meantime that an appellant's motion is pending resolution by the Commission.** In conformity with the NLRC Rules, the monetary award, for the purpose of computing the necessary appeal bond, shall exclude damages and attorney's fees. Only after the posting of a bond in the required percentage shall an appellant's period to perfect an appeal under the NLRC Rules be deemed suspended. [83] (Emphasis and underline supplied).

While *McBurnie* has effectively addressed the preliminary amount of the bond to be posted in order to toll the running of the period to appeal, there is no hard and fast rule in determining whether the additional bond to be posted is reasonable in relation to the judgment award.

In *Rosewood Processing Inc. v. NLRC,*[84] we found the reduced bond of ₱50,000.00 acceptable as substantial compliance relative to the ₱789,000.00 judgment award. In *Nicol*, the ₱10 Million bond was enough to perfect appeal from a ₱51.9 Million judgment award.

In *Lopez v. Quezon City Sports Club, Inc.,* the NLRC ordered the posting of an additional ₱6 Million and held as compliant a ₱10 Million bond relative to the judgment award of ₱27 Million. In *Pasig Cylinder Mfg. Corp. v. Rollo*, we ruled that the reduced appeal bond of ₱100,00.00 satisfies the requirement for an appeal from the judgment award of ₱3.13 Million. In *University Plans*, the ₱30,000.00 bond was accepted in perfecting an appeal from a ₱3.013 Million judgment.

In the case at bar, the motion to reduce bond filed by the Corporations was resolved by the NLRC in the affirmative when it found that there are meritorious grounds in reducing the bond such as the huge amount of the award and impossibility of proceeding against the Corporations' properties

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83 Id.

84 352 Phil. 1013 (1998).

which correspond to a lower valuation. Also, the NLRC took into consideration the fact of partial payment of ₱419 Million. The NLRC found the ₱4.5 Million bond posted by the Corporations as insufficient, hence ordering them to post an additional ₱4.5 Million. Thus, ₱9 Million was held as the amount of the bond as reduced.

The Court of Appeals found the amount of the appeal bond adjudged by the NLRC as measly and insufficient and raised it to ₱1 Billion. The appellate court rationalized:

> The required Php3.453 BILLION appeal bond sought to be reduced by the private respondents is equivalent to an average of Php452,140.00 separation pay for each of the 7,637 employees held to be illegally dismissed by the employer who sought a reduction of the required Php3.453 BILLION appeal bond because the employer allegedly put up Php428 Million which consists of the Php419 MILLION unpaid commitment plus the Php9 Million already paid-up cash appeal bond.
>
> Even if we consider Php 419 MILLION unpaid commitment plus the Php 9 Million already paid-up cash appeal bond, the unpaid appeal bond is still Php 3.025 BILLION. Php428 Million is still miniscule compared to the Php3.025 BILLION unpaid portion of the appeal bond. What the 7,637 workers need is cash or surety guaranty in the event of renewed victory on appeal for the 7,637 petitioners-employees who were awarded one month salary for every year of service as separation pay totaling Php3.453 BILLION Pesos. Php419 MILLION Pesos promise and the Php3.025 BILLION unpaid appeal bond both become more obscure if the employer would be permitted to subsequently employ artifices to evade execution of judgment.
>
> The decision to reduce the amount of appeal bond is not a blanket power to the NLRC, because the discretion is not unbridled and is subject to strict guidelines because Art. 223 of the Labor Code is a rule of jurisdiction that affords little leeway for liberal interpretation. The order of the NLRC reducing the required appeal bond from Php 3.453 BILLION Pesos to only Php 9 MILLION Pesos is in grave abuse of its discretion and therefore void, not to mention that it is per se unreasonable and without factual basis.
>
> We have considered the circumstances and evidence presented in this case relative to the motion to reduce appeal bond. We have taken into consideration the Php 419 MILLION unpaid commitment plus the Php 9 Million already paid-up cash appeal bond, and the resulting unpaid appeal bond which is still Php 3.025 BILLION. We still deem it proper under the law and the Constitution for the protection of labor that private respondents be required as pre-requisite to perfecting appeal, to POST, within thirty (30) days from finality of this judgment, additional appeal bond of Php 1 BILLION Pesos, in cash or surety, which amount is even less than one-third (1/3) of the original appeal bond required by law,

> which We hold to be reasonable under the circumstances and to be based on the evidence presented in this case. The additional appeal bond of Php 1 BILLION is equivalent to an average of Php 130,941.46 (instead of the original average of Php452,140.00) for each of the alleged illegally dismissed 7,637 workers.[85]

Notably, the computation of the judgment award in this case includes damages.

The NLRC Interim Rules on Appeals under Republic Act No. 6715 specifically provides that damages shall be excluded in the determination of the appeal bond, thus:

> SECTION 7. Bond. In case of a judgment of the Labor Arbiter involving a monetary award, an appeal by the employer shall be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission in an amount equivalent to the monetary award in the judgment appealed from.
>
> For purposes of the bond required under Article 223 of the Labor Code, as amended, the monetary award computed as of the date of promulgation of the decision appealed from shall be the basis of the bond. For this purpose, **moral and exemplary damages shall not be included in fixing the amount of the bond.**
>
> Pending the issuance of the appropriate guidelines for accreditation, bonds posted by bonding companies duly accredited by the regular courts, shall be acceptable. (Emphasis supplied).

When the rules were amended in 1993, attorney's fees were also excluded in the judgment award for the purpose of computing the appeal bond, *viz*:

> SECTION 6. BOND. - In case the decision of the Labor Arbiter, POEA Administrator and Regional Director or his duly authorized hearing officer involves a monetary award, an appeal by the employer shall be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission or the Supreme Court in an amount equivalent to the monetary award, exclusive of moral and exemplary damages and attorney's fees.

Subsequently, in an amendment by NLRC Resolution No. 01-02, Series of 2002, the rules in effect at the time the appeal bond was interposed

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85 *Rollo* (G.R. No. 180149), pp. 122-123.

by the Corporations, the provision on exclusion of damages and attorney's fees was retained:[86]

> SECTION 6. BOND. - In case the decision of the Labor Arbiter or the Regional Director involves a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond. The appeal bond shall either be in cash or surety in an amount equivalent to the monetary award, exclusive of damages and attorney's fees.

Thus, under the applicable rules, damages and attorney's fees are excluded from the computation of the monetary award to determine the amount of the appeal bond. We shall refer to these exclusions as "discretionaries," as distinguished from the "mandatories" or those amounts fixed in the decision to which the employee is entitled upon application of the law on wages. These mandatories include awards for backwages, holiday pay, overtime pay, separation pay and 13th month pay.

As a matter of fact, in *Erectors, Inc. v. NLRC*,[87] it was concluded that no bond is required if an appeal raises no question other than as regards the award of moral and/or exemplary damages.

In *Cosico, Jr., v. NLRC*,[88] the employer was held to have substantially complied with the requirement when it posted the bond on time based on the monetary award for backwages and thirteenth month pay, excluding the exorbitant award for moral and exemplary damages.

The judgment award in the instant case amounted to an immense ₱3.45 Billion. The award is broken down as follows: backwages, separation pay, moral and exemplary damages. For purposes of determining the reasonable amount of the appeal bond, we reduce the total amount of awards as follows:

The mandatories comprise the backwages and separation pay. The daily wage rate of an employee of Aris ranges from ₱170-₱200. The average years of service ranges from 5-35 years. The backwages were computed at 108 months or reckoned from the time the employees were actually terminated until the finality of the Labor Arbiter's Decision. Approximately, the amount to be received by an employee, exclusive of damages and attorney's fees, is about ₱600,000.00. The Labor Arbiter granted moral damages amounting to ₱10,000.00, and another ₱10,000.00 as

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86 It was likewise retained in the present 2011 NLRC Rules of Procedure.

87 Supra note 49.

88 338 Phil. 1080 (1997).

exemplary damages. The total number of employees receiving ₱20,000.00 each for damages is 5,984, bringing the total amount of damages to ₱119,680,000.00. This amount should be deducted as well as the ₱419 Million unpaid commitment plus the ₱ 9 Million already paid-up cash appeal bond from the actual amount to determine the amount on which to base the appeal bond. Thus, the total amount is ₱2.9 Billion.

We sustain the Court of Appeals in so far as it increases the amount of the required appeal bond. But we deem it reasonable to reduce the amount of the appeal bond to **₱725 Million**. This directive already considers that the award if not illegal, is extraordinarily huge and that no insurance company would be willing to issue a bond for such big money. The amount of ₱725 Million is approximately 25% of the basis above calculated. It is a balancing of the constitutional obligation of the state to afford protection to labor which, specific to this case, is assurance that in case of affirmance of the award, recovery is not negated; and on the other end of the spectrum, the opportunity of the employer to appeal.

By reducing the amount of the appeal bond in this case, the employees would still be assured of at least substantial compensation, in case a judgment award is affirmed. On the other hand, management will not be effectively denied of its statutory privilege of appeal.

VIII.

The Corporations invoked the decision issued by the NLRC last 19 December 2006 which set aside the labor arbiter's decision and ordered remand of the case to the forum of origin to have the instant petitions dismissed for being moot.

When the NLRC granted the motion to reduce the appeal bond and the Corporations posted the required additional bond, the appeal was deemed to have been perfected. The act of the NLRC in deciding the case was based on petitioner's appeal of the labor arbiter's ruling, which it deemed to have been perfected and therefore, ripe for decision.

Prudence however dictates that the NLRC should not have decided the case on its merits during the pendency of the instant petition. The very issue raised in the petitions determines whether or not the appeal by the Corporations has been perfected. Until its resolution, the NLRC should have

held in abeyance the resolution of the case to prevent the case from being mooted. The NLRC decision was issued prematurely.

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. SP No. 96363 dated 26 March 2007 is **MODIFIED**. The Corporations are directed to post **₱725 Million**, in cash or surety bond, within TEN (10) days from the receipt of this **DECISION**. The Resolution of the NLRC dated 19 December 2006 is **VACATED** for being premature and the NLRC is **DIRECTED** to act with dispatch to resolve the merits of the case upon perfection of the appeal.

SO ORDERED.

JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

ARTURO D. BRION
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

ESTELA M. PERLAS-BERNABE
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.

ANTONIO T. CARPIO
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division 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.

MARIA LOURDES P. A. SERENO
Chief Justice